





*Presented to the*

UNIVERSITY OF TORONTO  
LIBRARY

*by the*

ONTARIO LEGISLATIVE  
LIBRARY

1980





Digitized by the Internet Archive  
in 2007 with funding from  
Microsoft Corporation









*Geo. Bryan*

From a painting by Albert Rosenthal in the Governor's Room at Harrisburg  
after the original in possession of George B. Logan, Pittsburgh  
(In his hand is the first act emancipating slaves in history—  
the Pennsylvania Act of 1780)



George Bryan  
and  
The Constitution  
of  
Pennsylvania

1731-1791

By

BURTON ALVA KONKLE

*AUTHOR OF*

"The Life and Writings of James Wilson, 1742-1798,"

"David Lloyd and The First Half-Century of  
Pennsylvania, 1656-1731," etc.

---

WILLIAM J. CAMPBELL

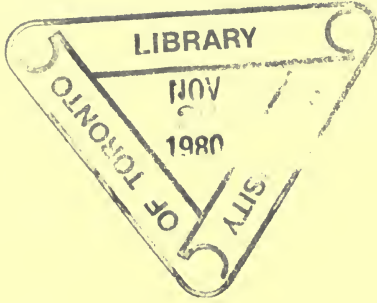
PHILADELPHIA

1922



19313





Copyright 1922  
By  
BURTON ALVA KONKLE

F  
153  
K8

To  
MY WIFE  
SUSAN MONTAGUE FERRY KONKLE



THE FIRST ABOLITION OF SLAVERY

A

MONUMENT

TO

GEORGE BRYAN

Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That all persons, as well negroes and mulattoes as others who shall be born within this State, from and after the passing of this act, shall not be deemed and considered as servants for life or slaves; and that all servitude for life or slavery of children in consequence of their mothers, in the case of all children born within this State from and after the passing of this act as aforesaid, shall be and hereby is utterly taken away, extinguished and forever abolished.

—Extract from the Act of March 1, 1780, Laws of Pennsylvania,  
advocated, written and its passage secured by

George Bryan



# Contents

CHAPTER	I.	The Maker Passes and a Defender is Born, 1731 .....	1
CHAPTER	II.	The Constitution and the Dublin Boy Increase in Strength, 1731 .....	9
CHAPTER	III.	He Becomes a Philadelphia Importer and Sees Editor Franklin's Republican Tendencies, 1752 .....	22
CHAPTER	IV.	Mr. Bryan Defeats Editor Franklin and Holds to the Old Constitution, 1763 .....	42
CHAPTER	V.	As Assembly Leader and Judge, a New Continental Upheaval Brings Him Into the First Inter-Colonial Congress, 1764 .....	57
CHAPTER	VI.	The Subsiding Upheaval Causes a Union of Bryan and Proprietary Elements to Preserve the Constitution of 1701, 1766 .....	75
CHAPTER	VII.	Merchant Bryan Fails While Judge Bryan Succeeds as Jurist and Political Leader, 1769 .....	87
CHAPTER	VIII.	Judge Bryan and the Opening Revolution, 1774 .....	99
CHAPTER	IX.	Judge Bryan and the Constitutional Convention, 1776 .....	111
CHAPTER	X.	He Becomes Vice-President of Pennsylvania at Philadelphia, 1776.....	130
CHAPTER	XI.	His Second Term as Vice-President at Lancaster, 1777 .....	147
CHAPTER	XII.	President of Pennsylvania at Lancaster and Philadelphia, 1778 .....	154
CHAPTER	XIII.	A Third Term as Vice-President and Chief Organizer of the Executive Department, 1778 .....	167
CHAPTER	XIV.	The Leader and Organizer of the Legislation of the Assembly, I, 1779.....	189
CHAPTER	XV.	The Same Continued, II, 1780.....	208
CHAPTER	XVI.	A Justice of the Supreme Court and High Court of Errors and Appeals of Pennsylvania, 1780 .....	219

CHAPTER XVII.	Justice Bryan and the Council of Censors, 1783 .....	251
CHAPTER XVIII.	The Great Contest, 1784.....	264
CHAPTER XIX.	George Bryan and the New Constitution of the United States, 1787.....	299
CHAPTER XX.	The Fall of the Old Pennsylvania Constitu- tion of 1701-76, and His Death, 1789- 1791 .....	344



# Illustrations

I.	Frontispiece.	
II.	Maps of Pennsylvania Showing Counties Organized by 1752 .....	16
III.	An Advertisement of Wallace and Bryan, Importers	20
IV.	Governor William Denny .....	34
V.	George Bryan's Almanac Diary.....	36
VI.	Thomas Willing and George Bryan, Successors of Messrs. Galloway and Franklin in Assembly of 1764 .....	58
VII.	The Philadelphia Court House in Which Judge Bryan Sat in 1764 .....	62
VIII.	The City House, New York, in which The Stamp Act Congress Met in 1765 .....	68
IX.	Signatures to Stamp Act Congress' Memorial to The House of Lords .....	72
X.	Mantel in the Council Room, in which Vice-President Bryan Officiated .....	138
XI.	Site of the Court House Capitol in Lancaster, in 1777-78 .....	148
XII.	President George Bryan, 1777-78, by Rosenthal.....	154
XIII.	Map of Boundary of Pennsylvania Determined by the Bryan Commission, in 1779.....	178
XIV.	The State House in 1779, Showing The Assembly Room in which Mr. Bryan was Leader.....	190
XV.	The Abolition Act (a Section) as First Published After Becoming a Law.....	198
XVI.	A Commission of Justice Bryan of The Supreme Court of Pennsylvania.....	222
XVII.	Justice George Bryan, by Breckenridge.....	226
XVIII.	Supreme Court Room, State House, and View it Faced	228
XIX.	Cartoon of Justice Bryan, by Judge Francis Hopkin- son, 1784 .....	270
XX.	A <i>Centinel</i> Paper Heading and Signature.....	310
XXI.	The University of Pennsylvania in 1789.....	346
XXII.	The Tomb of Justice Bryan and His Wife.....	358
XXIII.	George Bryan and Abraham Lincoln, The One Began and The Other Completed Emancipation of Negro Slaves .....	362



## Preface

As the constitutional history of Pennsylvania is largely comprised in the lives of three men, David Lloyd, the father of the constitution of 1701; George Bryan, its defender and the father of the constitution of 1776, and James Wilson, the father of that of 1790, as well as the constitution of the United States, the proper procedure would have been to write the story of their lives in this order, as the present writer originally desired to do. Events and circumstances called for another course, however, causing the *Wilson* to be begun first, the *Lloyd* to be finished first and the one between, that of *Bryan*, to be finished last. It was hoped that they would appear in their natural order, and certainly they should be read in that order, as they are virtually parts of a trilogy giving the first complete account of the main constitutional story of Pennsylvania. The *Lloyd* and *Bryan* constitute the story of the first permanent constitution of this commonwealth, because the constitution of 1776 is merely that of 1701, with the royal and proprietary authority displaced by that of the people. These two volumes, therefore, represent about ninety years of life under what was practically the present British theory of a government of essentially one house promptly responsive to the changing will of the people. The third work, on *Wilson*, is the story of the victory of American political science over this, in both state and national constitutions. No other state has afforded so unique a constitutional phenomenon, or one more full of suggestion for the present day contest between these two theories, which is now world wide and has entered the field of an international government. The contest still is, on the one side, between individual sovereignty and corporate self-restraint, and on the other, no self-restraint and various principles that are the reverse of individual sovereignty. The writer has not succeeded in concealing his personal preference for the American political science or his belief that it will prevail in the end.

Remarkable as George Bryan's work was in this field,

his most distinguished act was as the first emancipator of slaves, by law, in the whole world, by which he freed the slaves of Pennsylvania in the abolition act of 1780.<sup>1</sup> This alone gives him a first place among the statesmen of mankind by the side of Abraham Lincoln; Lincoln completed what Bryan began.

The present writer gave the most extensive study of Bryan then made, in his life of Judge Thomas Smith in 1904, and then said that such a work as the present one ought to be prepared. The conviction grew with the years, and he wishes especially to express his appreciation of the aid in the actual production of it, by the Honorable Samuel Bryan Scott of Philadelphia, long a member of the Pennsylvania House of Representatives and author of a work on *State Government*; Rev. William S. Plumer Bryan, D.D., Pastor of the Church of the Covenant (Presbyterian), Chicago, Ill.; Dr. George Paull Marquis, Chicago, Ill.; George Bryan, Esq., a distinguished lawyer of Richmond, Va.; Mr. Samuel S. Bryan, Titusville, Pa.; Mr. George Bryan Logan of Pittsburgh, Pa.; the late J. P. Kennedy Bryan, Esq., a distinguished lawyer of Charleston, S. C.; Mr. Thomas S. Bryan, Columbia, S. C.; Hon. William F. Bryan, formerly Mayor of Peoria, Ill.; Mr. George Bryan and Miss Jane Bryan of the same city; Mr. Wilhelmus B. Bryan, Washington, D. C., and Mr. Strickland L. Kneass of Philadelphia. Scarcely less helpful have been the Historical Society of Pennsylvania and several of its officers and attendants, notably Miss Jane Wylie. Courtesies have been received from Mr. Fitzpatrick of the MSS. Division of the Library of Congress; the Rev. Drs. Hill and MacColl, pastors of the First and Second Presbyterian Churches of Philadelphia; Mr. Luther E. Hewitt, Librarian, and other officers of the Philadelphia Law Association and the Association itself; Secretary Robins of the University of Pennsylvania; Clerk Taylor of The Superior Court, and State Librarian Montgomery, as well as others too numerous to mention.

BURTON ALVA KONKLE.

Swarthmore

1 February, 1922.

---

<sup>1</sup>The writer does not ignore the case of Vermont, and treats of that elsewhere in this volume.

## CHAPTER I

### THE MAKER PASSES AND A DEFENDER IS BORN

1731

On a beautiful spring day in 1731, an April day, the 6th thereof, on the green banks of the Delaware river just above the mouth of Chester Creek in Pennsylvania, in what was then a village, Chester by name, the first capital of Penn's colony, and in one of the most beautiful mansions of that day in the whole Quaker colony, looking out over the very waters where the *Welcome* had anchored, there passed away the most important resident of that colony during the first half-century of its existence. The aged figure who had seen seventy-five springs come and go since his birth, in Cromwellian days, in Wales, was David Lloyd, the father of the first permanent colonial constitution of Pennsylvania of 1701, by which he gave to that colony the dearly won liberties of the revolution of 1688, that the great Founder, William Penn, was unable voluntarily to give because of the unwillingness of both Crown and Parliament to pass on their new liberties to the colonies. Like the products of the revolution of which this charter of 1701 was a part, it was itself the result of a half-century of struggle, including the twenty years of effort to secure it and the thirty years of hard fighting to put its principles into the colony's laws and keep them there. So when on that April day the aged creator of that great instrument, that was to last and grow stronger for three-quarters of a century, gave over the struggle to a new generation, he doubtless had faith that more than one defender of it would arise in the years to come.

And when that spring was ripened to mid-summer, scarcely four months and five days after the great Quaker commoner's passing, there was born on August 11th, prob-

## 2 BRYAN AND PENNSYLVANIA'S CONSTITUTION

ably the most persistent, powerful and faithful of all the defenders of that Pennsylvania *Magna Charta*. And unlike its creator, he was born on the Irish side of the Irish Sea, a Presbyterian in the Irish Catholic capital of the green isle, Dublin, and he was christened at a Calvinistic font as George Bryan, the middle child of five children of Samuel and Elizabeth Dennis Bryan, the former a well-known merchant and importer of the Irish metropolis, who had large dealings with the colonial capital and metropolis on the Delaware, Philadelphia.

But just what was it that so great a man as David Lloyd had given his life to create and establish and that George Bryan was destined to give his to defend?<sup>1</sup> The revolution of 1688 in England, that created a limited monarchy, did not create a republic by any means; but it was one of the greatest advances ever made in the whole history of constitutional liberty. The year 1688, indeed, was but the crest of the wave, begun before Cromwell and extending—probably never ending, until Great Britain becomes a clearly defined republic. There began then, politically, what has more recently been begun industrially, namely, joint control; in the former case joint control by the Crown and the representatives in Parliament, especially the Commons; and in the latter, joint control of industry by capital and labor, in both of which cases the dominant power rests with the greater mass of the people: in the former case because of the control of the purse and in the latter because of control of power. The joint control made constitutional and legal agreement necessary, and the supremacy of law: the day of arbitrary, unagreed to, action was a thing of the past, and the great feature of the movement was the transmutation of this principle into institutes and laws applying it to all departments of life. This was a long and difficult process, and, as has been intimated, will never end, probably, until Great Britain abandons the principle of joint control, by compact, and becomes a clearly defined republic, resting sovereignty on the individual alone.

---

<sup>1</sup> For fuller treatment of it, see *David Lloyd and The First Half-Century of Pennsylvania, 1656-1731*, by Burton Alva Konkle.

If this process was long and difficult in Great Britain it was far more so in the colonies, and most so in the proprietary colonies, like Pennsylvania, where the proprietor was a Viceroy, with clearly defined royal powers, yet limited by both Crown and Parliament, according to the theories of that period. But Pennsylvania was, by her Stuart charter, a constitutional monarchy, and loose and strict construction of that instrument prevailed respectively, in the colony and in the mother country, while of necessity the latter prevailed in the mind of a Proprietor, who would keep his frail hold upon his charter in a period when neither Crown nor Parliament desired the preservation of such instruments. This situation was peculiarly difficult in Pennsylvania during the first half-dozen years, from 1682 to 1688, because of Mr. Penn's close relations to the last two Stuart Kings, whose despotism gave culmination to the revolution; and the next dozen years, to the end of the century, were scarcely better, under Parliamentary suspicion of Penn as a Jacobite, with an amazing unwillingness to pass on the points of the revolution to the people of Pennsylvania, farther than their charter plainly granted already. In fact, if Mr. Penn's grave financial difficulties, resulting even in mortgage of his colony, had not given the people of Pennsylvania the power of the purse, in large measure, it is doubtful if David Lloyd could have won the constitution of 1701 from the necessarily unwilling Proprietor, who sought to neutralize its provision and bewailed its existence as long as he kept his faculties unimpaired. This unwillingness, it must be remembered, was due to his struggle to save the charter of his colony from the despotic policy of the Crown before 1688, and the actual threats of Parliament to take it from him after that date. The result in Pennsylvania was an almost continuous state of revolution, of the mild, un-military Quaker sort, but none the less effective, for the first twenty years of the colony's existence.

What then was this twenty years' contest designed to secure? Nothing essentially different from the aims of the revolution in the mother country, namely, control over their own laws through the power of the purse—a comparatively

simple proposition in England, because there were but two parties to it then, the Crown and Parliament. A law was offered for approval of the Crown, and appropriation was withheld, if it was refused. The process was far more complicated in Pennsylvania, for at first, Mr. Penn was independent of the purse-power of the Assembly, and the passage of a law was hedged about with obstacles that seem inconceivable at this late day. Let us see what they were: 1. If the people desired a law they must get the legislative Council, or upper house, which was also the Proprietary adviser, to agree to prepare the measure and publish it. 2. The Assembly, or lower house, was to be called, to meet but eight days, with only the right to accept or reject, without amendment. 3. If it was accepted, then it must secure the consent of the Council, which had been persuaded to draft it. 4. If Council accepted it, then the consent of the Lieutenant-Governor, who represented the Proprietor, must be secured. 5. If that was gained, it must still secure the Proprietor's acceptance. 6. If that was granted, the consent of the English Board of Trade, or colonial office, must next be obtained. 7. Then it must pass the scrutiny of the Crown counsel, which reported to the Board of Trade, and 8, and finally, it must pass the imperial policy of the Crown in Privy Council. Here were eight obstacles to the passage of a law by the people of Pennsylvania! It will be seen, therefore, how very simple the process in the mother-country was, in comparison.

The object of that twenty years' revolution in Pennsylvania was merely to reduce those eight obstacles to something within the reasonable limits of English colonial liberty. From the first almost, the Assembly determined to have full powers of a House of Commons, but it had to fight for it continuously, Mr. Penn himself insisting that it was "no debating society." This fight was begun before Mr. Lloyd appeared on the scene in 1686, and the resistance to the Council's sole right of preparing laws was a part of it. As David Lloyd's power as a leader increased, because, among other things, of his resistance of the royal assumption of control of the colony in 1694, he led them in securing the



more democratic charter, or constitution, of 1696, from Penn's Lieutenant-Governor, and, when, in 1699, on the Founder's second visit, this constitution was annulled by him, the contest for the reduction of legislative obstacles was concentrated in a united demand for a new constitution under David Lloyd's leadership. Their specifications for the new instrument were drastic and uncompromising.<sup>1</sup> The people's own representatives in the Assembly, or lower house, were to propose and prepare and debate their own laws on their own adjournments. This removed the first two obstacles. The next demand was looked upon as revolutionary, namely, the Council, or upper house, was absolutely destroyed, thus concentrating all legislative power, so far as the people were concerned, in one body only, the Assembly. This may be misunderstood, unless it is remembered that, as Parliament is composed of Crown, Lords and Commons, in its full sense; so the legislature of the colony of Pennsylvania was composed of Crown, Board of Trade, Crown Counsel, Proprietor, Lieutenant-Governor, Council and Assembly, in actuality. So that the removal of the Council was by no means so radical a procedure as the removal of the upper house would be in a republic. Two legislative houses in a republic furnish the organ of self-restraint; but, when there are seven organs of restraint such as then obtained in Pennsylvania, there was little need of the solitary one providing self-restraint, so one would think today; and so, indeed, did David Lloyd and his party think at that day. Mr. Penn, however, har-

---

<sup>1</sup> The chief legal part of the struggle, although it was dealt with politically, was the objection of Pennsylvania to this illegal, or defective union with the section now called Delaware. It is one of the most interesting unique points in all colonial history, and has been fully treated in *David Lloyd and the First Half-Century*, by the present writer. It will be sufficient, for the purposes of this narrative, to say, that the defective title of the Duke of York, later James II, to that territory, vitiated also Mr. Penn's title, so that when, on his arrival in 1682, he attempted to combine the two colonies, thoughtful legal minds looked upon the operation as vitiating his entire Delaware river project, on the west bank, so far as government was concerned. So that separation of the two colonies became a chief object of those leaders with legal knowledge from 1682 to about 1704 when it was securely effected. The Proprietary element wanted them united in order to keep a firmer legal pretension to title to the Delaware territory, then known as the "Lower Counties." The Crown never gave up its claim to title in that territory, until our revolution of 1776 settled it. This, however, was only an added perplexity, but was, in its nature, separate from the main contention of these years, namely, the right of the Pennsylvanians to the liberties of the revolution of 1688, rights which, strange to say, were virtually contained in the original charter of 1681, so far as the creation of a constitutional monarchy in Pennsylvania was concerned.

rassed by his financial difficulties and ever threatened with the loss of his charter, was far from holding a like opinion, and, he was so determined to neutralize this concession that, after he had embarked on the river, he created an advisory Executive Council, by commission, and so bound them and the Lieutenant-Governor together, that the latter would have to be a man of great courage and principle to dare act contrary to that Council's vote. And this became the fruitful source of conflict in the years to come.

Mr. Lloyd, however, had destroyed a constitutional legislative upper house, and this removed one of the most serious of the eight obstacles to the passage of a Pennsylvania law. Then came the most important—in some senses—demand of all, namely, that the actual Governor only, the Lieutenant-Governor who was on the ground, and not the Proprietor, whose agent he was, should be a part of the legislature. This was not to be secured by the proposed constitution, however; because it could be secured by the common law of the agent, and David Lloyd was so able a lawyer that he had been chosen as Attorney-General for the colony by Mr. Penn himself, when he came over in 1686, and he knew it could be done. The main object to be gained by this, however, was the great principle of English liberty, the control of the irresponsible executive by the legislature of the people; in this case, the Lieutenant-Governor to be dependent for his salary and appropriations on the Assembly, because Mr. Penn was now unable to pay his lieutenants' salaries, and the temper of the people was warning to him not to send over an executive of independent means as he soon tried to do in Governor Evans' case. Here, indeed, was the back-bone of the great contest for the constitution of 1701, and the fight to make it work out was to last for nearly thirty years more. In this achievement practically two more obstacles were disposed of, actually, but only one, theoretically, namely, the Proprietary consent.

There still remained the Board of Trade, or colonial office consent, Crown counsel opinion, and Crown and Privy Council policy as obstacles; but these were looked upon as legitimate imperial constitutional powers, so long as they

did not encroach on the original charter to Mr. Penn and the people. There was no inclination at this time to fight these three obstacles, as institutions; although their encroachments were fought valiantly, as in the case of David Lloyd's defiance of the Vice-Admiralty Court's assumption of control within the bounds of Pennsylvania. And, indeed, they did not hesitate to play tricks on a too provincial attitude in the Board of Trade by using a law, without publishing it or not reporting it until the time for disallowance was nearly over and then re-enacting it as a new law; or re-enacting the same law already reported and disallowed—under a new title! The result of this adoption of the new constitution, or secondary charter, as it was also called, in 1701, was to make the legislature of Pennsylvania consist of only an irresponsible Lieutenant-Governor, made responsible by dependence on the power-of-the-purse in the people's representatives, and a single-chamber Assembly. As they looked upon the combined Crown-Board of Trade-Crown Counsel as only an organ of imperial constitutionality test, to which they did not object, the result was an essentially English constitution, with the obstacles practically reduced to two; for as time proceeded, the three-in-one imperial organ came to be more carefully and constitutionally respectful to the royal charter, to Mr. Penn and the people. And it may be well to emphasize the point that while the territory of Pennsylvania was granted to Mr. Penn alone, the government was granted to both him and the people, a difference that was a no small source of confusion in this early period, not only in the minds of the people, but in that of Mr. Penn as well. It will be seen therefore that what was technically secured in this great instrument of 1701 by David Lloyd and his party was as precious a treasure to the people of Pennsylvania as *Magna Charta* was to their forefathers, or the revolutionary agreements of 1688 to their own generation in England. And this was true even at the end of twenty years' struggle to secure it, technically.

Actually and practically, it was to take at least thirty more years to make it an establishment, transmuted into institutes and laws covering the various departments of

colonial life. And this operation was not unlike the very same process in England in establishing the principles of the revolution of 1688. The constitutional part of the charter to Mr. Penn and the people, gave the former a half of the legislative power, all of the executive and all of the judiciary, except juries. So that the thirty years leadership of David Lloyd after 1701, had as its objective as much of a modification of the charter of 1681 as Parliament had in modifying the English constitution itself. It was not until 1727, for example, that the great colonial judiciary foundation of 1722 was established—an act that is still the foundation of jurisprudence in the Keystone state: in other words, it took over a quarter of a century to establish in law, what had been won in this single department, in 1701; and if this one thing were all that David Lloyd ever did, it alone should win him eternal gratitude and a place in the front rank of creators of liberty. The struggle included far more things than that, however, for the effort to restore practical legislative powers to the advisory Council of the executive was almost the fiercest struggle of that thirty years and came as near to bloodshed as Quakers probably ever came. It was fought so tenaciously that it is doubtful if Loydeans would have succeeded had not Mr. Penn's mental failure and final death in 1718 thrown the estate into a long litigation which gave a much more loose reign to executives and made them wholly dependent on Assembly appropriations. When this was finally secured the rest came more easily, so that when the great father of the constitution of 1701 died in the spring of 1731, that great instrument was looked upon as established, in much the same sense as the principles of the revolution of 1688 were looked upon as established at that time. Not that either one ever afterward could dispense with defense for an instant, or that the transmutation of those principles into statutes and laws has ever ceased.

This was the situation in the Quaker colony in the summer of 1731 when the Dublin boy, George Bryan, was born.

## CHAPTER II

### THE CONSTITUTION AND THE DUBLIN BOY INCREASE IN STRENGTH

1731-1752

While the Dublin boy, George Bryan, was growing in strength and development, so was the *Magna Charta* of the Quaker colony across the sea, the constitution of 1701 in Pennsylvania; and before taking a closer view of the former a glance at the latter will be of service.

The Dublin ships that traded with Philadelphia in 1731 and heard of the death of their great commoner, David Lloyd, also heard how he was succeeded in the Assembly by another great lawyer, Andrew Hamilton, as lawyer, and a second, a Quaker lawyer, John Kinsey, as public leader—two men to take the place of the great commoner, in that one body alone. They also might have heard Lieutenant-Governor Gordon report how difficult it was to secure a third, able to take over still other duties of the father of the constitution of 1701, those of Chief Justice of the Supreme Court, and how he finally succeeded in persuading the most learned man in the colony, indeed, probably in all of the colonies, not a trained lawyer, like either Hamilton or Kinsey, but Judge of the Philadelphia courts in which the Dublin boy was yet to sit, James Logan, the first and ablest leader of the Proprietary party for the past thirty years, and the late David Lloyd's chief antagonist. They heard also how the project for a State House, voted under Lloyd's last speakership, the first, even though Pennsylvania was a half-century old, was now being carried out, as if a home were needed for the Quaker colony's *Magna Charta* of liberties, which had cost a half-century of struggle, and this home was destined to be the birthplace of still greater

liberties of a nation. They also heard how James Logan, the chief authority on Indian relations, reported the ominous schemes of the French intrigues with the Five Nations and their allies to the westward, which was only a symptom of an almost world-wide conflict that was to be one of the chief features of the next two or three decades and furnish the great unsettling element that was greatly to aid in consolidating the fruits of liberty in all the colonies on the American shore.

The Dublin boy was scarcely two months old, when, on October 17, 1731, Governor Gordon announced the re-establishment of the fundamental judiciary law of 1722, on account of news of royal repeal of a repealing law, which proved to be the end of the late commoner's decades of struggle for a right judicial establishment for Pennsylvania, an event which, probably more than any other, had much to do with the permanence and development of the constitution of 1701. Such royal disallowances of laws did not always work such happy results as in this case, and both Governor and Assembly, during this year, had secured Ferdinando J. Paris of London as colonial Agent to attempt to make a better presentation of their causes. The chief of these causes was the Assembly's efforts to overcome the results of the British policy of compelling the colonies to trade only with the mother country, which was unable or unwilling to absorb all of the colonial products and so kept draining Pennsylvania of her coin to pay unfavorable trade balances, thereby compelling the colony to use all sorts of artificial means to attract coin and, finally, a few years before this date, to resort to paper money for the mere currency needs within the colony itself, an expedient that needed periodical increases in amounts and so aroused opposition in London.

By January 18, 1734, the Assembly was meeting in a building on the new square near the operations of building the new State House, and during the year Thomas Penn, and his brother, John, who had been born in Second Street, visited the colony. The death of Governor Gordon in 1736, on August 5th, brought Chief Justice Logan to the tem-

porary office of chief executive, or President of the Executive Council, and was followed in October by the appointment, as Clerk of the Assembly, of the rising young editor and publisher, Benjamin Franklin, whose advent in the political field was to be of considerable moment to the three-year-old boy in Dublin. The old jealousy in the Assembly, of any power in the Executive Council, which was now covering the interregnum awaiting the appointment of a new Governor, flashed up during the winter, the Assembly refusing to present themselves to the Council since it had no power of legislation. Nothing serious happened before the arrival of Governor Thomas in 1738, on June 1st, except the appointment of Andrew Hamilton as Judge of Admiralty on August 18th, the previous year. This delay was caused by Lord Baltimore's contention that the Penns had no right to appoint a Governor over the lower counties, now comprising Delaware. Speaker Hamilton, during the following winter, however, had occasion to use all his tact and Proprietary inclination to quiet the conflict between the Assembly, led by Kinsey, and backed by young Franklin, over the Penns' unwillingness to receive their quit-rents in depreciated paper money. A consideration of this, while it led to the Assembly's willingness to make up the loss, even though refusing to make a special paper rate to the Penns, served to remind the colonists that they, not the Penns, were bearing these unfavorable balance burdens. It required a splendid farewell address by Speaker Hamilton to smooth it over, on August 11, 1739, pointing to a prosperity far beyond all other colonies, which was "almost wholly owing to the excellence of our constitution," which, as a Proprietarian, he attributed inaccurately to Penn, who had signed it under protest and compulsion and who was not slow to avow his hatred of it again and again. Added to this was the Quaker Assembly's refusal to subscribe for imperial defense against Spain and irritation because of the drafting of their servants. They finally, in 1740, offer to give the Crown \$3000, if they are returned. These difficulties culminated in November 24, 1739, in an elaborate report by Chairman Isaac Norris giving a history of the



colony's use of paper money and its effect on gold-exchange rates. Paper money had become an absolute necessity to the colony's existence, as well as prosperity.

During 1740-41 the Quaker Assembly, dominated by Kinsey and influenced by young Franklin, became more and more anti-Proprietary, with the departure of Thomas Penn and the death of Hamilton during the summer of 1741, and they determined to replace the Proprietary counsel as Agent in London, with one of their own choice, Richard Patridge, who had been agent of some of the northern colonies for years. This aggressive attitude left Governor Thomas to play a difficult rôle and he was paid no salary for the next two years, because he would not pass their bills expressing that purpose, especially in their determination to increase the amount of paper money. So that in 1743, on February 2nd, their *quid-pro-quo* principle won and the Governor yielded. But if Governor Thomas had been fearful about Spain he was still more so regarding the naval and military aggressiveness of France, so much so that he offers to waive his own support on May 18, 1744, if they will prepare for defense. On July 24th, the following year, they yielded and granted £4000 for the "King's use," as they phrased it, to avoid responsibility for military support. Although John Kinsey, the Quaker lawyer and leader, was both Speaker and Chief Justice at this time, the fructifying suggestiveness of young Editor Franklin, as Clerk of the Assembly, was much in evidence. During that autumn Speaker Kinsey was in Albany taking part in the negotiations for the Indian treaty but the military situation was so ominous in February, 1746, that Governor Thomas, on receiving a plea for action from Governor Clinton of New York, suggested a union of the colonies to the Assembly on the 3rd, to which they expressed willingness, if other colonies were likewise inclined. The gravity of the situation was so much greater by June, that an £80,000 paper-money act was proposed by the Assembly, the greatest yet proposed, with the provision for another grant of £5000 for "the King's use." To this the Governor countered with a proposal that, as the colony had not paid a provincial tax



for above twenty years, he would agree if they would provide for a sinking of old issues, for any new issues above £5000, and to this the Assembly agreed. With this war-tax agreement, as will presently appear, grounds were found for a more serious anti-Proprietary conflict than had occurred since the great fight under Governor Sir William Keith, and was to end only with independence.

By May 29, 1747, the administration of Governor Thomas had come to a close because of ill-health, and the Assembly, under Quaker leadership, broadened by young Editor Franklin's influence, felt that it had done well enough in voting £6213 to the "King's use," in the past two years, and permitting the counties to form militia companies known as "Associators." About a year's interregnum of Executive Council followed until the peace of Aix-la-Chapelle of 7th October, 1748, when a new kind of Governor, a colonial product, was secured. This was none other than the son of the late Judge of Admiralty and colonial leader, Andrew Hamilton (who had become famous in 1735 for his defense of the freedom of the press in the Zenger trial at New York), namely, James Hamilton. Like his father, young Hamilton was sufficiently sympathetic to the Proprietary to have won their confidence, but also, as a citizen of Pennsylvania, broadly appreciative of the colonial political standards, and respectful of the Assembly's position as a House of Commons; for he had been chosen to that body in 1734, when but about twenty-four years old and was five times re-elected; served as Mayor in 1745, Councillor in 1746, and had recently been visiting in London, when the Penns selected him for his new post, and he arrived on November 23, 1748.

The advent of Governor Hamilton signified the arrival of a new generation to take the helm, who were native born and settled in the political ideals of the constitution of 1701. James Logan was past his usefulness, his death occurring about two years later; while the passing of Speaker Kinsey occurred only about six months before that of the great Quaker scholar, and brought young Editor Franklin not only to membership in the Assembly, but to actual leader-

ship of it, and that too of a most vigorous sort, beginning August 13, 1751. Not only so, but he made his son, William, his successor, as Clerk of the Assembly. Scarcely more than a week passed, when, on the 21st, the new leader proposed that the Proprietary pay a part of the cost of Indian presents, which were so large a part of the cost of Indian treaties; and he backed up his proposal the following day in a history of Indian treaties that showed that the Assembly had often given gifts but refused to pay more than half the cost. Probably this comparatively insignificant incident was the rill that was destined to increase into a flood which was to soon threaten the levee of Proprietary refusal to share the financial burdens of the colony. Editor Franklin was now a man of forty-five years, nearly twenty-eight of which had been spent in this metropolis of the American shore, Philadelphia. Coming as a boy of seventeen, he had really served a long apprenticeship as a citizen before assuming political leadership. Indeed, while he had avoided this particular kind of leadership, he had long since become a powerful leader in the intellectual life of Philadelphia, in the creation of institutions of various kinds devoted to public progress; hardly a feature of life in the city but received the impetus of his genius, from the common stove to the identification of the familiar lightning as electricity which, by the way, occurred at about this time. As postmaster at the western metropolis for the past fifteen years, he became the father of the continental postal service. Indeed, he looked at everything in its universal aspects—"hitched" every "wagon to a star." So that when he had been public printer for the Assembly for many years and then Clerk for the past fifteen years, it was perfectly natural for him to find some universal aspect of government in Pennsylvania that had large possibilities of progress and development in it, as it would no doubt be as structurally radical as were his ideas in other fields. Among the first of these was the discovery that the Proprietary did not share justly in the burdens of the province and furthermore, did not intend to do so. And, as his little unostentatious kite-flying experiment at Ninth and Chestnut Streets had in

it vast possibilities which, within two years, were to place his name among the immortals of the old world, so this simple observation of Proprietary injustice was to carry him and the colony into world-wide relations of vast moment to both.

There is no evidence, however, that Editor Franklin had any special reverence for the constitution of 1701. He accepted it, to be sure, but his "wagon" was "hitched to a star"; and constitutions and political science were not in his purview overmuch: he was a great seed-sower rather than an architect and builder; and was much more interested in the spirit of freedom than in a corporeal form in which it might live. He was a native American and was born in the most radical part of the continent and grew up in the spirit of resistance even to the conservative radicalism of his native colony. Indeed it was because he had to fly from that colony as too radical for it, that he was now a citizen of the Quaker province. He undoubtedly had intimations of independence as the ultimate destiny of the colonies even in those early days, and also had a consequent comparative indifference to the political institutions as they then existed. His fructifying mind roamed abroad in all fields, so that the political was only one field, and that the latest one to attract his attention.

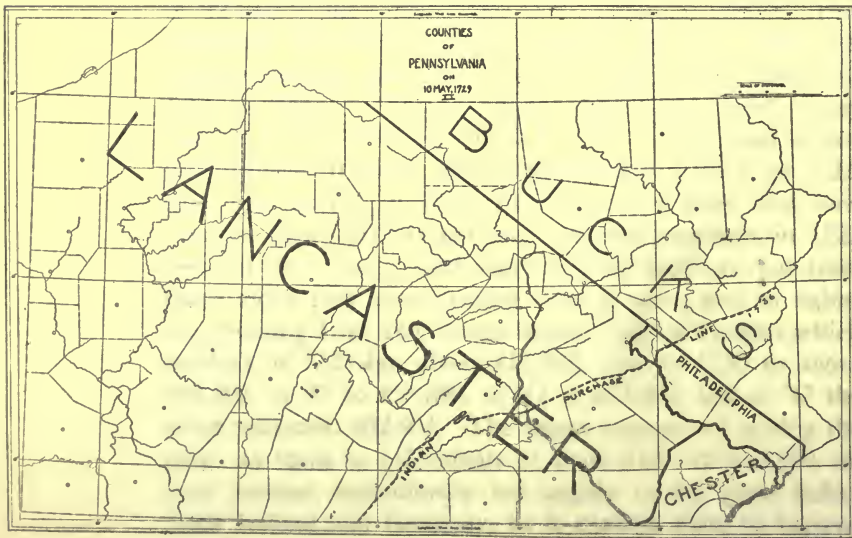
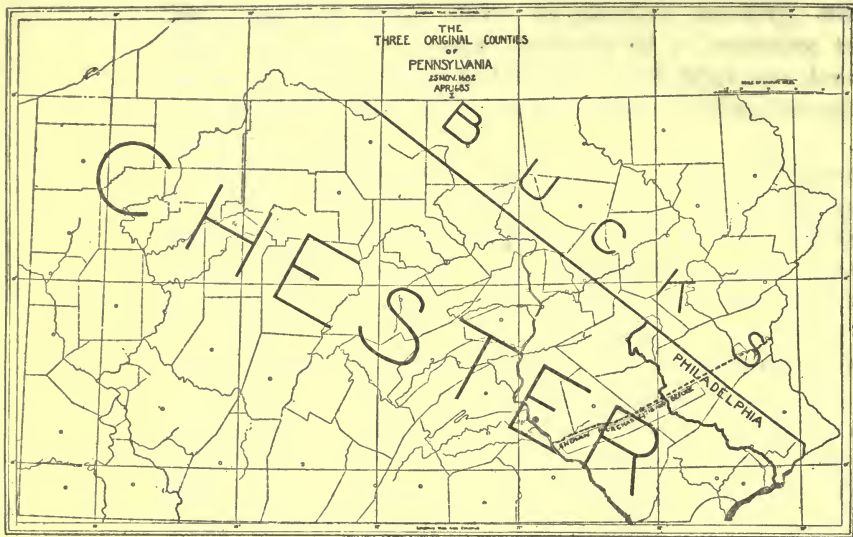
This was an entirely different attitude from that held by the old liberal leaders, who had fought so long both to secure the constitution of 1701 and to carry its principles into every department of Pennsylvania's political life. It is entirely probable also that because Editor Franklin knew this so well and knew that the people cherished those traditions, he was respectful to it and slow to enter the political field even with the men of his generation. It was as though he expected long life and expected more congenial ideas in a coming younger generation. He found thorough sympathy in his proposals to compel the Penns to bear their share of the new burdens, and in doing so uncovered in their true light the British commercial exploitation of the colonies during his first year in the Assembly. The continual draining off of provincial coin by the unfavorable

balance of trade made a constant stringency in currency that made new paper issues an absolute necessity, and Editor Franklin was made chairman of a committee to canvas the whole subject and report, which latter was done on August 20, 1752, and it produced much serious thought during that month.

He showed that the first paper issues, in 1723, had saved the colony, and turned the tide of decay, illustrated by vessel clearances from Philadelphia in 1721 at 130, 1722 at 110 and 1723 at only 85, when £15,000 were issued; that the results were so apparent that £30,000 more were struck the same year; that in 1729, £30,000 more were ordered; and ten years later £5000, while in 1746, when £5000 more were issued, the total struck by the province was but £80,000, and none has been issued since; that in 1756—four years from now—this was ordered sunk at the rate of one-sixth a year, and new issues must now be provided. He showed that great progress had been made in the colony in various ways: that Philadelphia had grown from 1995 taxables in 1720 to 4850 in 1740 and in 1751—the previous year, 7100; that Bucks county had made probably as good a showing; that Chester, with 2157 in 1732, rose to 3007 in '42 and in the present year, 1752, came up to 3951; that Lancaster in 1738 had 2560 taxables, and even with two counties carved out of it now had 3977; that York with 1466 in 1749, in 1751 had 2043; that Cumberland, which had but 807 in 1749, had 1134 in 1751. Trade had shown like advance: from the vessel clearances of only 85 in 1723, they rose to 171 in 1730, 212 five years later, and now average about 403 per annum. London importers in 1723 sent but two vessels, with manufactured products, but from those alone they now average nine a year; and in value, not counting Irish and Scotch linens, English imports which reached in 1723 but about £15,992, rose in 1730 to about £48,592, in '37 to £56,690, in '42 to £75,295, and in '47 the latest statistics, £82,404. The happy manner of issuing the paper as loans to individuals of from £12—10 to £100, on easy interest, undoubtedly led largely to the great influx from Ireland and Germany, as it enabled them to become



U.S. GOVERNMENT PRINTING OFFICE: 1917

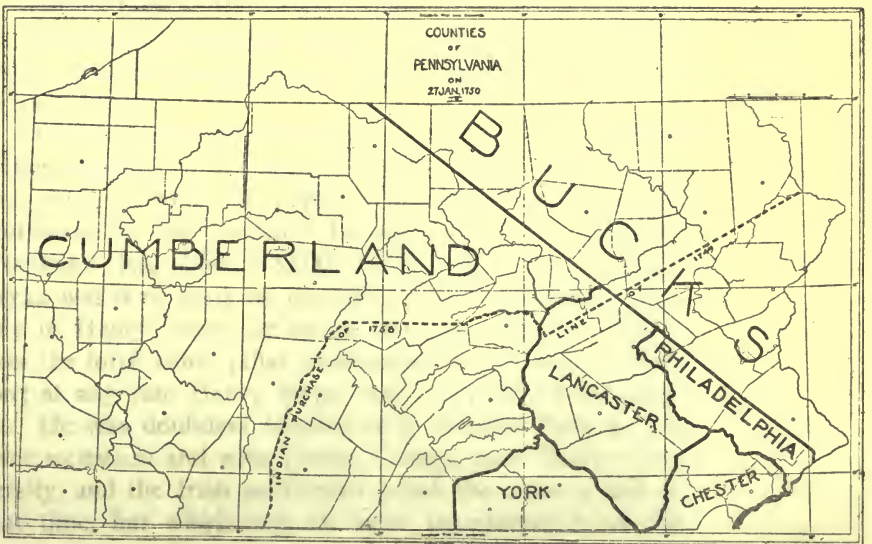
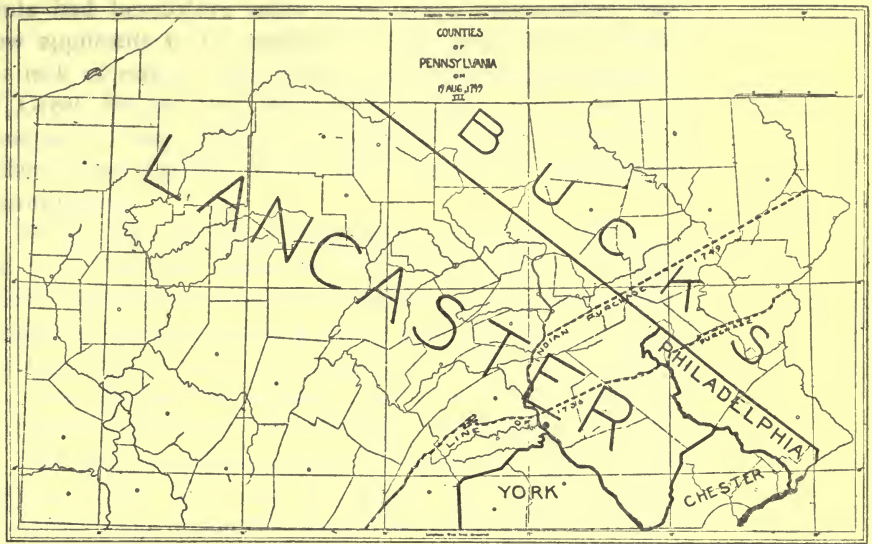


MAPS OF PENNSYLVANIA SHOW

Prepared by the au

THE CONSTITUTION LAW 1787

James Madison, 91-94 (by George Washington, 1787)



COUNTIES ORGANIZED BY 1752

original sources





land holders; while the re-issue of paid loans to new applicants had heretofore made new issues unnecessary; but now applicants to the number of 1000 have to be refused for lack of issues. He closes by appealing to the cupidity of Great Britain that labor will continue to be dear in America so long as land can easily be bought between the Atlantic and Pacific, and so she cannot rival England in manufactures.

At the time of this consideration, in August, 1752, at the new Province House at Sixth and Chestnut Streets, where they were now buying the whole square and ordering a clock for the new tower, a young Irish merchant was just getting settled in partnership near the Market Street wharf, who was destined to become a leader of the people who particularly prized the old provincial constitution or charter of 1701 and to challenge Editor Franklin and some of his political ideas. This was the Dublin boy, George Bryan, now just of age during this very month, and come to America to seek his fortune. Twenty-one years of age, he had been born in Dublin, as has been said, on August 11, 1731, the very year of the passing of David Lloyd, in Pennsylvania, and attention may now be turned from that colony in America back to the western shore of the Irish Sea and the capital and metropolis of the "Green Isle," which had always been the headquarters of the English colony in that distracted land.

The picturesque city of "The Black Pool," as the name Dublin signifies, at the head of the bay of the same name, and sitting astride the Liffey river, and flanked to the southward by the beautiful background of the Wicklow Mountains, had about 115,000 people in 1731 when George Bryan was born there on the north side of the river, probably in Henry Street, at whose junction with Earl Street rises the lofty Doric pillar surmounted by a statue of Nelson; at any rate Henry Street was the family home later on. He was doubtless familiar with Phoenix Park up the river westward and with Trinity College, later Dublin University, and the Irish parliament which the country had at that time, but which was no more representative of the

people than was the British parliament of its own people. He was equally familiar with the long exploitation of Ireland, beginning with Charles I's discouragement of woollen manufactures and an attempt to encourage their exclusive devotion to linen manufacture, so that Irish industry was characterized by a steady decadence during the whole period of his minority. The Irish parliament furnished great names that were the household words of his youth, and it was the age of Bishop Berkeley and Dean Swift.

His father, Samuel Bryan—for no earlier family records have been discovered—was a Dublin merchant, importer and exporter of good standing and means, whose wife was a Miss Sarah Dennis, whose brother had moved to America and located in Philadelphia. They had two daughters, Elizabeth and Nancy, when their first son, George Bryan was born in 1731, the first of three sons, the younger ones being Arthur and Samuel. The family were Irish Presbyterians and most devoted to their church, as had been most of their "ancient and very respectable family," to use the words of a friend of the son of many years later.<sup>1</sup> Like Presbyterians everywhere they believed in education, and the family letters indicate that they had a good degree of it, but just what was its character and where received is not known. George Bryan, their eldest son, however, was an independent student of much native ability and all his life a most omnivorous reader. It is not improbable that some of it was received in the parish schools of his church. His father was very ambitious for him and as the young man approached his majority decided to set him up in business as a merchant importer and exporter and correspondent or factor in the American metropolis, Philadelphia, where his brother-in-law, Mr. Dennis, was settled. In canvassing the possibilities there, he was no doubt informed, that in the *Pennsylvania Gazette* of October 31, 1751, a Philadelphia merchant, James Wallace, who was a merchant of that kind with close connections in Dublin, was getting settled and had removed his store from opposite the Queen's

---

<sup>1</sup> Dunlap's *American Advertiser*, 31st Jan., 1791, in a sketch of George Bryan. The records of the Dublin Presbyterian Churches are so defective at this period as to furnish no details.

Head in Water (the river front) Street to near Chestnut Street on the same thoroughfare, and had just received a fine shipment of Irish linens from Dublin by the ship *Sally*, of which he is agent, as he is also of the *Lenox* and *Friendship*, which latter is soon to be bound for Dublin.<sup>1</sup> By February 4, 1752, Mr. Wallace had found a still better site on the same street near Market Street, and he requests settlement as he expects to leave the province "on one of the first vessels in the spring." There is every probability that this meant a trip to Dublin, for during that spring he made a deal with either George Bryan or his father to become a partner, and George arrived with him. For young Bryan, who would not be of age until the following August 11th, was in Philadelphia at least before the brig *Jenny*, Capt. Alex. Magee, cleared for Dublin on July 2nd, as he sent a letter by that ship to his father on that date.<sup>2</sup>

The new firm of Wallace and Bryan made their first announcement in the *Gazette* on August 6th, just five days before young Bryan's twenty-first birthday as follows: "Just arrived at Newcastle [in what is now Delaware] from Ireland, the ship *Sarah and Rebecca*, Peter Eaton, Com-mander, in which there are a parcel of likely men and women servants, among whom tradesmen of different sorts, whose times are to be disposed of by Wallace and Bryan, merchants in Philadelphia." Thus was this young man launched in business as a merchant importer and exporter, factor and agent of Dublin houses, among them his father's, at the very summer period in which Editor and Assembly-man Franklin had presented the Assembly's statistics showing why Governor Hamilton should sign a bill emitting a new issue of paper money of £20,000.

By the *Crawford*, on August 6th, the young merchant wrote his father, Samuel, a hasty letter, which did not please

<sup>1</sup> James Wallace had been in business as early as 1748, was in Water Street "opposite Fishbourne's Wharf" in 1749, in Water Street near Chestnut in 1750, and in 1751 announces a stock received on a vessel from Dublin, Captain William Wallace.

<sup>2</sup> *The Crawford*, Capt. Nat. Stokes, from Dublin, entered Philadelphia on 11th June, and announced itself outward bound on July 2nd, while on June 18th the *Betty and Sally*, Capt. Snead, cleared for Dublin and on the 25th the *Sally*, Capt. John Giddings, cleared for the same place. These are all the advertised sailings for Dublin at this period.

the elder Bryan, who promptly despatched an answer by the next boat, the *Sarah*, Capt. Correy, which sailed on the date the letter was written, September 23rd. "Dear George:—" he writes, "I received yours of 6 August last, but so short a one does not please me. I am sure you knew of the *Crawford's* sailing some days before she came out, and you, by that, had no right to plead your being in a hurry, and these are idle excuses, and letters writ in a hurry are never well done. I expected a list of occurrences since yours by the *Jenny*, and how the present crops have proved in corn and flaxseed, very proper to be taken notice of at the time of your writing. I am informed your evenings are taken up in boating on the river, and down to Mr. Bleakly [who had leased Province Island]. This can in no way improve you as a man coming into life. I have commended you to the best of company to keep, men in business, men of conversation and good manners, that when I meet you again I may not meet with the Rustic or Tar, but the genteel, pretty agreeable fellow as well as the competent merchant, and this will never be the case if you proceed in your present course, for you take the readiest method to lock yourself from what I have been recommending to you to do. Mr. Bleakly is an honest man, but he is not a man of all men I should choose for my companion; he never saw anything in his young days that could polish his person and manners, and I am afraid he has not improved either by going to Philadelphia. I gave you a long letter before, recommending your going into all companies where men of manners, sense, etc., were to be found—the expense I valued not—and those as good or better than yourself. Low, mean company are a scandal and a disgrace, and nothing can so effectually lessen you in the opinion of mankind. The amusement of dancing, fencing, the use of the small sword, taking a glass of wine or punch with a few of such as I am recommending at particular evenings,—this would, after business is over, be showing yourself to mankind to be known and regarded. Away with boating and let me never hear more of such a thing, unless on business or on a party of pleasure with good company."

---

*Philadelphia, August 20. 1752.*

**A**ll persons indebted to **JAMES WALLACE**, or to **WALLACE** and **BRYAN**, are desired to make immediate payment: And those that have any demands against them, are desired to bring in their accounts, that they may be paid, as James Wallace intends to leave the province by the 20th of September next.

THE FIRST ADVERTISEMENT  
of Wallace & Bryan, Importers, in  
*The Pennsylvania Gazette*



"Let not the carelessness of the world about you," he continues, "with respect to God and religion have any effect on you, for if once you can lose sight of this, you will be an easy prey to every vice which offers. I conjure you to take my advice and directions, if you value and regard me as your tender, affectionate father, watchful of your happiness, willing and wishing you to be good and happy. Could you but conceive my joy in attaining those happy ends, you would not stop in your pursuit till they were made your own. I am doing everything in my power to advance you in the world and establish you as my son. Do not defeat it in any one instance, but resolve and I am sure you have resolution enough to surmount anything I can find fault with. For news, little is going; nothing new in my family, or among your friends—who are well; your uncle and aunt and cousins Jenny and Matty are all well and join in love to you. Your mother joins me in hearty prayers to God for your health and prosperity here, and happiness to all eternity. I am your tender, affectionate and watchful father, Samuel Bryan."<sup>1</sup>

This letter of course voices a father's warnings and ambitions, not any serious defects in the son; indeed assumes a very high character, which this young Irish merchant was to abundantly prove in the coming years, and that, too, not only in his private capacity but in the larger field of public duties and love for his adopted land, in which, just at present Editor Franklin was so effective a leader.

---

<sup>1</sup>Letter in possession of Hon. Wm. F. Bryan, Peoria, Ill. A postscript to it is curious: "Do not omit to send your mother 2 or 3 kegs of cranberries, and some pickles, both peaches and cucumbers, as well as other pickles that are green and pretty. Send no more sturgeon; it is very bad; what you sent is so full of salt and spice it is not worth a penny. Send us some hickory sticks to make yards, and if you know a ship of yours or ours is coming here, I wish you would send us one of your best Cads, [a horse ?] one that is sure-footed, goes well, fast and not rough and not old; perhaps such may be picked up some time before, that it might please; for a thing of that kind could not be got to satisfaction if bought when the ship is going; but takes time and opportunity. We wrote about wax or spermaceta candles—the wetness of the season has spoiled all our bees, and wax next winter may be very dear; so do not omit our order and let some candles be 2, 3, 4, and 5 to the pound—some 6 to a pound, but very few."

### CHAPTER III

#### THE PHILADELPHIA IMPORTER SEES EDITOR FRANKLIN'S REPUBLICAN TENDENCIES

1752

In choosing Philadelphia as a location and the business of a merchant importer and factor as an occupation, the Bryans, father and son, were either fortunate or far-sighted or both; for it soon became evident that Philadelphia was out-stripping Boston as the former commercial metropolis, destined to have a population of nearly nineteen thousand before the close of this decade; while the occupation of merchant in all the middle and northern colonies was the dominant one, together with their lawyer retainers, so that young Bryan was on the high road to a share in leadership of this province of Pennsylvania, if his personal abilities equalled his opportunities.

Among the better known merchants of that year were William Wallace, Thomas White, Joseph Saunders, Mordecai Yarnall, Joseph Redmond, John Bell, Isaac Jones, Benjamin Rawle, Levy & Franks, Alexander Hamilton, Parker & Garrett, Robert Moore, William Moore, Joshua Fisher, the Strettell Brothers, Thomas Wharton, Thomas Preston, Edward Pennington, Isaac Greenleaf, William Grant and others, some of whom advertised most of the time and some only as occasion arose, as in the arrival of a new cargo. Wallace and Bryan's second announcement, on August 20, 1752, asked settlement because the senior partner wanted to go away in September. Twice in December their notice appeared in the *Gazette* and then nothing more until April 19, 1753. During the next month Mr. Bryan was out on a business trip for the firm, a partial diary of which has been preserved. It is dated 16th May, 1753: "The country adjoining is pleasant and clear of woods. Next



morning, leaving Amboy three miles to the southward, I proceeded to Brunswick, a pleasant town, situated on the southwest bank of Raritan river. It consists of one long street lying parallel to the river. The tide rises high enough to bring up small sloops, which carry away all their exports to New York. In three hours I reached Cranberry and slept at Allentown, a poor straggling place. Having business at Mount Holly [New Jersey] I crossed the country and by difficult roads got thither by noon. This is a considerable country town mostly inhabited by Quakers; here is an ironworks. A navigable branch of Ancocus passes through the town and brings up large boats. The adjoining country is generally sandy and barren, the timber pine. In three hours I reached the Delaware and had Philadelphia in full prospect on the opposite shore. Next day I set off westward for Carlisle."<sup>1</sup>

His firm advertised in May, once in July, in August and in September, but frequently in October, in one of which they are mentioned as headquarters of the Captain of a Dublin bound ship.

They advertised more fully in 1754 and on October 10th, they announce the prospective closing of their partnership, a statement continued until February 4, 1755, when final dissolution is announced, followed on March 4th, by George Bryan's public notice of succession to the partnership and a new store location on Front Street between Market and Arch, in the former dwelling of Mr. Conyngham.<sup>2</sup> Thereafter Mr. Bryan was in business alone, and on February 26, 1756, had his store at the northeast corner of Water and Market Streets, and advertised occasionally the receipt of cargoes from Dublin, mostly dry-goods, but, like all those importing houses at that date, had a variety even greater

---

<sup>1</sup> It seems that Mr. Bryan at this date made himself, according to the custom of the day, a pocket memorandum book or diary by folding sheets of paper and cutting and stitching them; that, like many another before and since, who attempted a diary, he wrote in it in 1753, then some in 1758 and then, in 1760, securing a Dublin pocket almanac, containing a large amount of valuable reference matter, somewhat after the manner of the famous almanacs issued by great metropolitan dailies, he fastened his almost blank diary in the back—and made no use of it, apparently, until he became a public man in 1764. The above extract is from that almanac diary, which, in the course of time has found its way to the Congressional Library at Washington, and is now in the Manuscript Division.

<sup>2</sup> James and Thomas Wallace, however, opened a new firm at the old site.

than the department store of our own day. It was during this year, on 5th July, on the issue of new paper money, he was one of twenty-eight leading citizens who offered, if appointed to sign these bills, to give their pay to the Pennsylvania Hospital, his name following that of Joseph Galloway, the distinguished lawyer, and preceding a scarcely less distinguished citizen, Charles Thomson. This was the first appearance of his name in the Assembly minutes.<sup>1</sup> In 1757 his place is described as on the "upper side" of Front street, between Market and Mulberry Streets and by October 13th, a location "exactly opposite," on Front Street on the "Bank," *i. e.*, east side of Front Street. After this he advertises very little—scarcely once a year, none in 1758, twice in 1759, then none until June 23, 1763, when "George Bryan's Store" is described as on Front Street between Market and Arch Streets, three times.

A letter of the previous year from Mr. Wm. Gilleland, New York, to Mr. Bryan, 1st March, 1762, shows the latter to be engaged in all the phases of a big importer, factor and agent, including vessel insurance. It was during 1763, on September 27th, that Andrew Elliot, Charles Coxe and himself, merchants, petitioned the Assembly to release Samuel Wallis from the debtors' prison, where he is incarcerated at the instance of John Moore, provided it do not affect their own case against Mr. Moore. This was the second appearance of his name in Assembly proceedings, where it was destined soon to appear more than that of anyone else.

It was about midway in this decade, as a prominent merchant, importer and wholesaler to the back country, that Mr. Bryan was married. In order to understand this relation fully, it is necessary to glance at the religious features of Philadelphia at this period. Few people realize the tremendous results of the evangelistic work of Wesley and Whitefield in the middle of the eighteenth century, and especially the latter. It was true of the whole country, but as the concern here is only with what happened in Philadelphia, it may be noted that Whitefield's audiences in 1740

---

<sup>1</sup> Mr. Bryan was one of those persons chosen and named in this act of Sept. 21, 1756, to sign the notes, as he was also in the act of April 22, 1758.

and thereabouts in the Quaker City were from 12,000 to 15,000, as a regular thing, and that at this time no building there could accommodate them and the leading men, Editor Franklin among them, built a new one at the southwest corner of Fourth and Arch Streets. The great evangelist was an Oxford man, and like the Wesleys, of the Church of England, but as the broad ideas of the Wesleys broke forth into a new religious body, so Whitefield came to be practically a Presbyterian of a broad kind, at that time dubbed "New Lights," as a secondary name. The result was that those of the old First Presbyterian Church and of all other bodies and of no denomination at all, who followed the great preacher at the new building at Fourth and Arch Streets, were formed into a new body in December, 1743, which took the name Second Presbyterian Church and used the new building as a church for several years. They chose as their pastor an American young man, who had astonished Whitefield in becoming a disciple who almost rivalled his master, Gilbert Tennant. They chose trustees, first among whom, as named in their charter, Samuel Smith, who was also a leading merchant, and among those who greeted Governor John Penn in November, 1763. The "new building," was bought in 1749 by Editor Franklin and others for a new academy, and it became necessary for the Second Church to build, as they did do, at the northwest corner of Third and Arch Streets, the following year a structure that rivalled in its proportions, even to a tower, the proud fane of Christ Church; a wag chronicler, indeed, averred that the Episcopalians said:

"The Presbyterians built a church,  
And fain would build a steeple;  
We think it may become the church,  
But not become the people."

—a sentiment that no doubt expressed a quite human resentment at the appearance of a vigorous new body of men in all departments of the city's life. The records of the period are not very helpful, but the famous preacher, Rev. Gilbert Tennant, was pastor of this new church at Third and Arch Streets, in 1752, when young George Bryan be-

came a Philadelphia merchant and importer and he doubtless became a member of it, and during the next five years fell in love with Miss Elizabeth, the daughter of Trustee Samuel Smith and his wife, Mary, born on February 4, 1732, and so was but about a year younger than Mr. Bryan. Pastor Gilbert Tennant married them on April 21, 1757, when Mr. Bryan was nearly twenty-six years old, and during this decade, up to and including 1764, when Pastor Tennant died, four children were born to them: Sarah, named for his mother and born on March 10, 1758; Samuel, no doubt named for both grandfathers, whose birth occurred on September 30, 1759; Arthur, born on September 1, 1761; and Francis, whose birth came on February 6th, 1764.<sup>1</sup> It will be remembered, also, that his home and store were but two squares away from his church on Front Street near Arch. He was therefore identified with the vigorous aggressive body of the followers of Whitefield and Tennant, and had followed his father's advice.

Mr. Bryan's private life was also characterized by vigorous and habitual student habits during these years. He was an omnivorous reader and the necessities of a trade position like his, making a certain general knowledge of law necessary, led him to an industrious study of the law, this period as well as a later one being peculiarly prolific in general works on law, because, in the colonies, members of the legal profession were not numerous and judicial and semi-judicial positions were quite generally held by men not professionally trained in the law. The study of law was a necessary part of the private study of every public man, or prominent man, who was always liable to become a public one. It was a period when prominent men in all walks of life, and especially the big merchants, were the natural occupants of the bench, even to the Supreme Court

---

<sup>1</sup>The church records afford no mention of these births, but they are in a leaf from George Bryan's family Bible, the leaf being in possession of Mr. Strickland Kneass, Philadelphia. The record of the marriage, on this leaf, gives the mother's birth on February 4th, plainly, but the year is undecipherable. The burial records of the Second Church, however, give her age as sixty-seven at her death on January 5, 1799, and as 1732 would make her within but one month of exactly that age, it is wholly probable that so small a margin would be ignored in a general statement. The imperfect records of the Second Church do not mention Mr. Bryan's membership of it, though it is now well known from several other general sources.

of the province. These were the kind of men who occupied the metropolitan bench and that of the provincial Supreme Court at this very time. For example, take the Supreme Court of Pennsylvania during these very years: The Chief Justice was William Allen, the very richest merchant in the entire colony, a son-in-law of the distinguished lawyer, Andrew Hamilton, to be sure, but a student of law only in the same sense that Mr. Bryan himself was. The same thing was true of his Associate Justices, like Lawrence Growdon, who was a Bucks county country gentleman, brother-in-law of the late Chief Justice David Lloyd, and father-in-law of the distinguished lawyer, Joseph Galloway; or like Caleb Cowpland who was merely a prominent Quaker of Chester; or William Coleman, whom Franklin described as "a merchant of great note," in Philadelphia also, before the close of this decade.

So while Mr. Bryan is winning a high place in the community of the metropolis of the American colonies, it will be well to observe how events were preparing for his entry into public life in that provincial capital. His advent in the place in 1752, when Editor Franklin was leading the Assembly in a fight for more paper money, sounding with his plummet the great question of unfavorable trade balance and the Proprietary's avoidance of bearing a just share of the colony's expenses, introduced young Bryan to pretty vigorous colonial politics. To overcome the opposition of government and Proprietary in London, Editor Franklin was made chairman of a committee of correspondence with the Assembly's London agent, Richard Patridge, on October 14, 1752. It was high time, too, for, when, in September of the following year, they were pushing their £20,000 paper bill against Governor Hamilton's resistance, they were confronted with his additional instructions on that point from the Lords Justice, but they met this with provision for an assistant agent, in Robert Charles, so that the two agents were instilled with the vigor of Editor Franklin's committee, and the knowledge that there was a dead-lock between Governor Hamilton and the Assembly. By the following February 6, 1754, the Assembly showed the Executive how

importations had increased—£15,992 of 1723; £48,592 of 1730, and similar increase until it was £190,917 in 1751, when they had no more paper than in 1730; and that exports of four main commodities, then about £60,000 in value per annum, was in 1751 £187,457, nearly three times as much. With these figures they propose £40,000 new paper and enter on a fight to a finish with Governor Hamilton all that year, until the unusually well-balanced and generally liberal Executive on March 2nd throws down the gauntlet reminding them that he is “not responsible to” them, while on May 15th, with a £30,000 bill as the limit of concession they deliver to him their ultimatum, which brings out the Executive retort that he is half of the legislature! They likewise retort—“not in raising money!” So that it was not surprising to hear Governor Hamilton announce on August 16th, that he was to be succeeded by a new Executive! The chief reason for this was that Governor Hamilton had been bonded by the Crown, before approving him, for £2000, that he would not pass such a bill except it were subject to approval by the Crown, a proceeding which the Assembly regarded as infringing on their liberties.

Before Governor Hamilton's resignation, however, he had joined the Assembly in taking part in an event which is very significant to this narrative. The war with the French and certain Indian allies led the Board of Trade to propose a convention of the colonies at Albany for the purpose of making friendly treaties with the Indians and also to attempt to formulate some plan of union for purposes of defense. On June 2nd Governor Hamilton wrote the New York executive that he was sending Messrs. Penn and Peters of his Council and Speaker Norris and Leader Franklin of the Assembly, but he is not hopeful of what they may do; and he “can see nothing to prevent this very fine province, owing to the absurdity of its constitution and the principles of the governing parts of its inhabitants, from being an easy prey to the attempts of the common enemy.” It was quite evident the measures of the aggressive Editor Franklin were so republican as to make the otherwise liberal Hamilton turn Proprietary with a vengeance. The experi-

ence that made him especially irritated just now was that a recent bill for £10,000 "for the King's use," had so many "little jokers" in it—to use a modern term, and was so "calculated to render them independent of the Governor for a long term of time," that he had to veto it, and so had no money to offer for his colony. He even suggests that Parliament ought to make them furnish quotas "independent of the Assemblies." They met at Albany on the 19th of June and all colonies above New Jersey, Delaware and Virginia were present. On the 24th a committee was appointed, embracing Hutchinson of Massachusetts, Atkinson of New Hampshire, Pitkin of Connecticut, Hopkins of Rhode Island, Franklin of Pennsylvania, Tasker of Maryland and Smith of New York, to prepare a plan of union, as the Board of Trade had suggested. Editor Franklin had offered a form at the Albany Court House meeting, which, on July 10th, was reported out in a modified form designed to include all the colonies from New Hampshire to South Carolina. This union was to be created by an act of Parliament, providing a royal President-General independent of the colonies, but a congress of colonial delegates, called the Grand Council, chosen by the Assemblies. The proportionate representation is interesting: Massachusetts Bay and Virginia were to have the largest, 7; Pennsylvania was the only one to have 6; Connecticut the only one to have 5; while 4 were assigned each to New York, Maryland, and each of the Carolinas; New Jersey being the only one to have 3, with 2 each to the rest—New Hampshire and Rhode Island, a total of 48, a number that could only be increased by those colonies, having less than 7, growing in wealth and population to equal Virginia and Massachusetts. This Grand Council had the freedom of Assemblies as to meeting, and, with the President-General, were to have power of handling colonization and purchase of western lands, until new colonies were created, and power of the purse and appointments. In fact it was modelled largely on constitutions like that of Pennsylvania's of 1701, except that the chief executive was to be independent of the legislative body because supported by the crown. It was submitted to the

British government and the colonies, but in the independence of the chief executive and taxing power it was too strong for the colonies and in the rest was too powerful for the mother country, and so came to naught. Its consideration by the colonies, however, as well as its creation largely by Editor Franklin, was undoubtedly most suggestive of future possibilities to them and to him, especially to him.<sup>1</sup>

With the arrival of another native American chief executive, Robert Hunter Morris, Chief Justice of New Jersey for the past sixteen years, still holding that office and destined to do so for many more years to come,—in October of this year, 1754, the Assembly are quick to demand his instructions and bring him to a test before the year was done and precipitate a war upon him forthwith. They knew he was brought in, as an outsider, to do what Governor Hamilton, as a resident, found too uncomfortable to do, and they wasted no time in aggressive action, and the course of their predecessors, in David Lloyd's time, was a source of precedent to them as well as inspiration. They of course conceive of the Lords Justice's instructions and executive bond against paper money as due to Proprietary influence, but deny the right of either. On December 31st they publish the correspondence of the previous year with the Proprietaries, in which it became openly known that the latter's Pennsylvania estates escaped taxation in both the province and in England! This publicity had incensed the Penns who say "you, unadvisedly, publish to the world, that our estate, in America, is exempt from the burdens borne by our fellow subjects in Great Britain"; and they advise the Assembly "to be very careful not to put people here in mind of that single exemption!" They intimate that if Parliament does it, they will also tax Pennsylvania's estates, but the Assembly are not to be moved by any such impossible case. If the imported New Jersey governor will not pass paper-money bills, it is because he has secret instructions not to do so; and they are illegal.

---

<sup>1</sup>The attempted purchase by Pennsylvania of the Indians this year is shown on a map at p. 28 in *Life and Times of Thomas Smith, 1745-1809*, by Burton Alva Konkle. All other Indian purchases are also indicated.



The gauntlet is thus thrown down by Proprietary and Governor on the one side and the Assembly and people on the other. The dead-lock continues during 1755 with increasing irritation until on May 16th, the New Jersey Chief Justice executive tells them wrathfully that they want to increase their own power and destroy that of the Crown; that they purpose a "scheme of future independency"; that their power is "already too great for a branch of a subordinate dependent government"—citing the fact that because he wouldn't sign paper-money bills, they had borrowed money on Assembly credit alone and paid it out on their own power, and created bills of credit, now circulating as currency, to the amount of £15,000; that he will see whether they have such power by laying the facts before the Crown. The Assembly retort, among other things, that they have no scheme of independence, never had, nor want any but what their constitution guarantees them, and that is to make laws as they please and not by anyone's else direction. He is reminded that they have a right, by law, to dispose of certain public moneys. They indicate that he is no friend of liberty and they expect no co-operation from him. By mid-summer of 1755, the New Jersey Chief Justice Governor is inclined to consent to taxation of Proprietary estates if the executive can have a share in choice of the assessor of them. On August 16th Chief Justice Allen and others try to compromise matters by offering £500 in lieu of what the Penns would have to pay, but on the 19th the Assembly naively suggest that this can be used as security to reimburse the Governor for damages for signing the new £50,000 bill! They show him that the Proprietary, with over half of government, was at first always intended to pay executive salary, and that because of poverty of William Penn quit-rents were voted, temporarily; but, when Lieutenant-Governors were sent over they thought this not enough and licenses and fees were voted them, also temporarily,—a second source of support of executive; these two not being considered enough by grasping executives, presents of a few hundred pounds were given as a third source of support, also temporarily. Soon all of these were

claimed as a *right!* And all this time claim of exemption of private estates of the Penns was insisted upon—a thing that no King of Great Britain dares claim. On September 29th, they tell him that his conduct as a Governor “appears to us the most likely thing in the world to make people incline to a democracy, who would otherwise never have dreamt of it.” They wish the Governor could be as easily changed by the people’s election as the Assembly can be, and Pennsylvania would then not be, as he has called it, “an unfortunate country.” It is time they should be parted, they tell him; the King is a better landlord!

This contest resulted in the appearance in England of a pamphlet called “*A Brief State[ment?] of the Province of Pennsylvania*, issued in 1755 anonymously, as was usual, showing that the colony was more of a republic than in early days, saying that a law of 1723, secured from the Proprietary in order to get money from the Assembly to prevent foreclosure of mortgage on the colony, gave the Assembly control of disposal of moneys voted and made both executive and nearly all officers of government dependent on the Assembly. This had made the colony practically a republic ever since. It proposed a test-law of allegiance to every member of Assembly, and, because the German settlers followed the Quakers in opposition to war-support, it proposed a plan of Pennsylvania-ization, much like present-day Americanization. The Assembly considered it a Proprietary propaganda and when it was discovered that Provost William Smith of the College of Philadelphia was the author they attempted to punish him, in one of the picturesque episodes of the day. A second edition was published by friends of the Assembly, incorporating reply to it, in which it is said: “After all the having proprietary governments in a country is incompatible with the rights of Crowns. It is a kind of *imperium in imperio*, and consequently a solecism in politics,” and the Quakers, at least, wish most ardently that “their gracious King would take them under his own protection.”<sup>1</sup>

---

<sup>1</sup> A second edition, with an answer, issued in 1756, p. 54, of the answer, and also p. 80.

The dead-lock continued until the New Jersey Chief Justice resigned and on August 19, 1756, announced a new executive on the way from New York, and that he himself was soon to retire again to the wool-sack. The Penns now determined not to try any American as executive, but selected a cultivated Oxford man and gentleman, a member of the Dilettanti Club of London, of baronial ancestry, connected with the Raleighs and Sidneys, and with army experience, Colonel William Denny, a bachelor in his prime at forty-seven years of age.<sup>1</sup> Governor Denny personally made a good impression and was at once voted £600, chiefly no doubt because he showed a perfect willingness to show his private instructions and put all his cards on the table in perfect frankness. During August they began trying him out on a £40,000 paper-money bill, for his instructions did yield on a certain kind of taxation of Proprietary estates, collectable from the tenant and deductible from their rent. The Assembly protested the instructions, however, although they compromised on £30,000 and waived their rights for the moment, but on September 23rd, they showed by an elaborate analysis of the elaborate instructions that the Proprietaries were indicating in great detail what a tax bill must be which Governor Denny was permitted to sign, and they proposed moving against the proprietors at once.

By this time, the situation seemed to be resolving itself into one somewhat like that in the time of David Lloyd and Penn, namely, the Assembly's exasperations at the number of obstacles in the way of securing the passage of a law designed to solve the great difficulties of the province. David Lloyd had fought out, as it was supposed, once and for all a Proprietary veto over their gubernatorial agent's acts, and here it was bobbing up again. It was supposed that David Lloyd had reduced the obstacles to the passage of a law from about eight, practically to two, and essentially to one, the assent of the Assembly itself. The Proprietary now seemed to be trying to revive one of these obstacles and incidentally arouse in the colonial office and crown manifestations of interference. The only thing to do now, if the

---

<sup>1</sup> From sketch by Dr. John W. Jordan, in *The Pennsylvania Magazine*.

Governor did not ignore his instructions, was to secure transfer of the Province from Proprietary to Crown. In October, Editor Franklin had secured a most able aid in his leadership in probably the most brilliant and able lawyer in the province, Joseph Galloway, and by mid-winter of 1756-7 they put up a £100,000 tax bill to Governor Denny, who merely points out that they can see it is against his instructions, and he says he will not quarrel with them. They remonstrate on January 26, 1757, in an ultimatum and order Editor Franklin and Speaker Norris to England as Agents-in-Chief, although only the former was able to go, causing leadership of the Assembly to be transferred to Lawyer Galloway, a combination, namely of Franklin in London, with Patridge and Charles as assistants, and Galloway as leader of the Assembly, which was hard to beat. This vigorous fight, during 1758, resulted in more virulent episodes in which Provost Smith was again arrested by the Assembly and Justice William Moore of Chester county charged with libel—so virulent that these two gentlemen found it advisable to absent themselves from the province for awhile.

Of what seems to be these arrests and hearings, Mr. Bryan has left some comment, speaking of them as those "who were most obnoxious to the prevailing side, but one person directly perjuring himself by accusing an absent person, and another, giving cause to fear the like, the inquiry dropped with a reprimand and charge of extravagant fees to their clerk, serjeant-at-arms and the witnesses, &c. During this inquiry a gentleman well respected by all parties, who had been a member of Assembly for several years, but of late declined on account of party disputes, was called as an evidence, but he, questioning their authority to administer an oath and desiring to be satisfied of this, was grossly abused and treated as a fool and knave. However, fearing to meddle with a man so unexceptionable, he was dismissed, while others were threatened with imprisonment, for this pretended offense. The last Assembly prepared a bill for regulating the Indian trade, but insisting on the sole nomination of the officers to execute the act,



GOVERNOR WILLIAM DENNY  
1756 to 1759

From a painting by George Knapton at the Society of Dilettanti, London  
Courtesy of *The Pennsylvania Magazine*



and appointing them chiefly out of their own house, it was rejected by the Governor. Some days ago this bill was revived, naming four Assemblymen and five others Commissioners for Indian Affairs; of these nine, seven are Quakers. The Governor proposes by way of amendment to strike the four first and three of the last and name others, as all will allow, unexceptionable men, but of different sects and parties, and that vacancies be supplied by act of legislature, instead of being named by the house as they intended. He adds a clause, making the office of member and Commissioner of Indian affairs incompatible; that the latter may be more easily brought to account, which could not be expected of the principal and leading member of Assembly.

“You may gather,” he continues, “from this last story, that it is for power and influence our people contend. They know the allurements of offices and posts of profit and how far their having the disposal of these gives influence. Seven out of nine being Quakers is proof of the weight of that sect, to preserve which they will leave no stone unturned. There is much uncertain talk of an attempt to be made against Ticonderoga, under Lord Howe. No disturbance from our Indians at present.”

The fight continued during the summer, and Mr. Bryan again writes, under date of 5th July [1758]: “Governor Denny seems not calculated for either the King’s or the people’s service. Mr. Bernard is just arrived Governor of New Jersey. No progress of importance has been made in the business on which Mr. Franklin was sent to London by the Assembly. The fleet of transports sailed on the 28th May from Halifax, since which we have not heard of them. The land forces were above 13,000, besides marines that might be landed if necessary. But you will have early news of them. The frigate belonging to this province is now out on her station, but has hitherto seen no enemy. To maintain her, 15 pence, currency, per ton is laid on all shipping clearing out of here, 30 per pipe on wines, 1d per gallon on spirits, 3 shillings per ton on refined sugar, &c., imported here, a tax much opposed by the traders, but warmly pushed forward by the country.

"Contention is here as rife as ever, tho' carried on more calmly. The Quakers, on the one hand, leave nothing unattempted to secure to themselves the direction of the government, which is no easy task, as they are, in time of war, very unfit for it. They have led the Indians to give as a reason for the war, that the Proprietors have cheated them of their lands. This affords a fine handle for clamor, and puts the consideration of their unfitness for public offices out of people's heads. The treaty before mentioned is another mighty matter, but they find savages not quite manageable enough, and therefore this seems a scheme of no long life, except General Forbes' success over the French should terrify them, and then our peace-makers will claim all the honor. It would be endless to mention all the artifices used to divide those who are not of their society: lying, misrepresentation and false reports are hourly practiced. And in Assembly where there are 18 Quakers out of 36 members, new strifes are introduced every sitting about the right to appoint to offices, which, you know, gives a mighty influence to the persons or party who enjoy it. Of the other 18, who are people of various views and interests, some few are partizans of the Proprietaries and others so much heated against the Quakers as not to oppose any measures however affecting the province, provided only the Quakers were incapacitated and brought down. The greater part see that no war-like measures can be prosecuted to effect, while Quakers preside in public councils, especially as they are forced to keep us in hot water, among ourselves in war time, lest they should lose their significance. This party is ill connected, has no heads of much influence and is scarce ever unanimous, when, as the Quakers are like a disciplined regiment and having no trouble with their own members, proceed coolly on their plans, which savor however, more of cunning than wisdom. This may be accounted for from their restrained principles.

"The division among the Presbyterians," he continues, "which happened about fourteen years ago, on Mr. Whitefield's coming over, about the tokens of regeneration, &c., is lately made up and their united synod sat here in May,



ing...  
Assembly have made a list of  
beyond these & the proprietors  
legis against the proprietors, we  
ly to keep up a just, what ever our  
unions for Government, in some of  
will might be the best attended to.  
All the points concerned for when  
can be fore the Board of Trade  
speculations, they last, after a pro-  
digious expense.

13th Nov. 1764  
Our Assembly have adjourned on  
1st May with making provision  
for the supply of the provincial troops  
or for entering into the rigorous  
measures proposed by the King's  
General, in order to bring the pro-  
viny calamities our frontier people  
known under, to a speedy conclusion.  
You will see by the printed  
papers the violent lengths they  
have gone in concerning ratables, a-  
gainst the proprietors & their  
administration - This is all con-  
siders, for our people began to grow  
they incessantly dissatisfied with the  
measures, & those of

over 5 frontier counties, to cry on  
for a repeal of the laws, & trade  
culinary for more Representative  
(of their interests), & short being  
agreed by Genl. Amherst & for the  
abolition of interfering in Indian  
affairs. 'Tis likely to be raised  
here, & they found it expedient to  
write a plain loud enough to  
warn all others, & nothing ap-  
pears so lately to take, as a di-  
fence with the proprietors, & ac-  
cordingly they continued to differ  
with the Governor on the subject  
of his share of the Carol. A.  
made for which had been settled by  
the King's Council in a very clear  
manner, however those who are  
determined to differ, seldom want  
a pretext, & accordingly the mean-  
ing of the Royal decree was that  
on the earnest & said to be doubtful  
& that which must be added, to give  
it a reasonable explanation. The  
Governor, considering the decree a  
an instruction to him, required  
to draw out the explanation, On the  
the house, after writing the



consists of 150 ministers and upwards, who all use the Scotch form of church government and adhere to the Westminster Confession in the Calvinistic sense. Most of the Episcopal clergy in these parts are of little reputation, some are discarded Presbyterians and the rest generally of no education, taken up for want of better. I know only of ten congregations in this province and the Delaware counties of the Church of England and these are small, except that in this city, which is numerous, and might well be divided."<sup>1</sup>

These perspicacious and penetrating observations show a grasp of the elements of political life and a profound interest in them at this early period of Governor Denny's administration in 1758, that fully account for the remarkable political ability that he was destined to show in actual operation in a comparatively few years. It also shows his alignment against the Quaker anti-Proprietary party, with which Franklin was identified, and a concern for a united opposition and efficient leadership, in which, by implication, he looks hopefully upon the new union of Presbyterians to which he refers, centering about the followers of Whitefield and Tennant and the Second Presbyterian Church, at Third and Arch Streets, of which he was a member.

But, to return to the provincial executive and his struggle, the pressure of the French and Indian War and of the Assembly was too great for Governor Denny; early in 1759, and in April, when the King and General Amherst called for supplies, and on the 17th, when he yielded and agreed to the £100,000 supply bill, the Assembly voted him £1000, and on July 7th agreed to stand by him in case the Proprietary prosecuted him. It was a great victory for the Assembly, but they still had to see it through in London, where Agent-in-Chief Franklin was to see to it that the colonial office and Crown did not disallow it. Governor Denny had followed in the footsteps of Governor Sir William Keith and it remained to be seen whether the Proprietary would consign him to the same fate. They did not displace him for a year, however, during which time the executive and legislature worked together well, and on September 29th, passed a law

---

<sup>1</sup> George Bryan's almanac diary in the MSS. Division, Library of Congress.

making all judges of the courts hold commissions *quam diu se bene gesserint*, or during good behavior instead of pleasure of the Proprietary, which was designed to establish the independence of the judiciary, but which was destined not to be allowed.

And Agent-in-Chief Franklin at once began to take measures to see it through, one most notable feature of which was the appearance, in 1759, of *An Historical Review of the Constitution and Government of Pennsylvania, From Its Origin*—so far as the legislative-executive contests were concerned. Like most controversial issues, this volume was anonymous, and, although it was ascribed to Dr. Franklin, he has authoritatively denied it, while admitting his connection with it. It has long since been conceived by the best authorities to be the work of his friend Ralph, who went over at that time. While colored by the atmosphere of this vitriolic contest and with a not very judicial spirit, it is still very ably written and preserves to succeeding generations some most valuable documents, not to be found elsewhere, as, for instance, the famous Lloydean *Remonstrance* of 1704. The vitriolic and partizan heat of this contest has prevented even historical scholars from yielding it the really valuable position it deserves as historical material. It is based on documentary evidence, as it announces on its title page, and there is no question but Dr. Franklin saw to its accuracy in that respect. No historical student of this colony can afford to ignore it, although, like much written from the provincial view-point alone and without knowledge of the colonial office and Proprietary private papers, it is superficial as to the greater movements underlying the phenomena it describes.

It shows, however, that the long executive-legislative contest, or—for it oftentimes took that form—the Proprietary-Assembly contest, had very real bases from the first colonizing proceedings under the charter of 1681, down to date; but with especial emphasis on the administrations of Governors Hamilton, Morris and Denny, especially the second named, to which great space is given. Quite as important as the text, if not more so, is the very large appendix

re-print of pertinent documents from the foundation of the colony. Thus it makes a good sized octavo volume and was issued in dignified form in London in 1759, coincidentally with the consideration of the laws under Governor Denny, taxing the Proprietary estates, and it made a powerful impression, though it was somewhat bludgeon-like. And of course it was attributed to Agent Franklin, and, as has been said, so far as his purpose to use it as a political club is concerned, the suspicion was well-founded, altho he did not write it, as anyone familiar with his style need not be assured.

Ex-Governor James Hamilton was in England during these recent months, and during mid-summer the Penns persuaded him to undertake again to stand up against the Assembly, the distinguished Philadelphian being a man of wealth and generally liked in the province. His commission was dated July 21st and on November 18, 1759, he again assumed the executive office. The war conditions making still further preparation necessary Governor Hamilton was presented with a £100,000 tax bill the early spring of 1760 and on April 2nd he tells them he is in favor of taxing Proprietary estates, if they are more fair than Cumberland county was recently, and on April 10th he yields. In September the Assembly presents some interesting statistics as a basis for taxation. The taxable citizens in the counties were as follows: Philadelphia county 5687; Philadelphia city, 2634; Chester county, 4761; Bucks, 3148; Lancaster, 5638; York, 3302; Berks, 3016; Cumberland, 1501; and Northampton, 1989. It will thus be seen that Lancaster and Philadelphia were about equal, with Chester following somewhat closely, and that Cumberland had the fewest of all. They also learn from Agent Franklin that a proportionate distribution of money to the various provinces on account of the war gives Pennsylvania £26,902; and the Assembly orders Franklin and Charles,—Patridge being dead—to receive and deposit it, and incidentally they ask Governor Hamilton to certify this appointment under his seal, but he draws the line there in October, whereupon, when, in January, 1761, the Governor tells them the Privy

Council has disallowed their supply bill, and he asks them to join him in an address to the new King, George III; they say they will do it separately. Furthermore, in the following March the Assembly decline to amend their supply bills along the line laid down by Mr. Pitt and throw down the gauntlet to him as well as to the Proprietary. On April 14th, the Governor reminds them that Pennsylvanians are not an independent people and the Privy Council, acting for the Crown, has a right to final decision, and they yield 500 men for the army. Then they offer him a £30,000 supply bill with all the features that the Privy Council had objected to—riders, separate from the main purpose of the bill, assumption of Assembly's sole right to dispose of public moneys, and compelling the Proprietaries to receive rents in paper money. When he objects, there is a dead-lock. Agent Franklin wants to come home and Charles refuses to act longer, whereupon John Sargent and other merchants in London are applied to to receive the deposited money of the province, and Editor Franklin prepares to come home during 1762. This was partly due to the close of the war and evidence of a reaction against the proposed transfer from Proprietary to Crown, because of fear of losing the precious constitution of 1701—a movement that was to bring the Philadelphia merchant, George Bryan, into public life.

An event of February 17, 1762, however, was to serve as an introduction to a semi-public life: this was an act passed on that day, replacing an act of April 29, 1758, granting the king duties on tonnage and spirits to support a provincial ship of war to protect the bay and river, which was now expiring. It provided for recovery of a large share of those duties uncollected and their application to pier improvements on the river and bay for the protection of shipping against ice, storms, and similar obstructions to navigation on river and bay for Philadelphia in-ward or out-ward bound vessels. The act itself named the commissioners who were to have charge of this important enterprise and they were to be "Samuel Rhoads, Henry Harrison and Thomas Willing, Esquires, Thomas Wharton, George Bryan, Luke Morris and Peter Reeve, gentlemen." For several years

they were engaged in directing public works at Reedy Island, which involved large piers and creation of new made land to rise above tide-water, involving considerably over £3000. Those who were particularly active in it and who made the report were Messrs. Bryan, Willing, Morris and Reeve.<sup>1</sup> He served as secretary and treasurer of the commission. This served to attract attention to Mr. Bryan's capacity and conscientiousness as a public officer, and it was to be referred to when he was first selected for full public service.

---

<sup>1</sup> For this report see *Votes of Assembly* of 20th Sept., 1765. For the act see *Statutes at Large of Pennsylvania*, Vol. VI, pp. 173-177.

CHAPTER IV  
MR. BRYAN DEFEATS EDITOR FRANKLIN  
AND  
HOLDS TO THE OLD CONSTITUTION  
1763

The dead-lock between Governor Hamilton and the Assembly, continuing in 1762, caused such irritation that, for the first time, they adjourned without the consent or agreement of the executive, even if the Crown did ask for soldiers in preparation for any further eventuality with France. On March 11th, however, they yielded 1000 men, but before the end of the month put up a £70,000 supply bill on the same old lines and with the same executive objection. On May 7th, however, on hearing of war with Spain, they again yield and order fortifications and vote £23,500. The accident of the death of a member from Philadelphia county, Representative Leech, was occasion for the first electoral expression of the reaction against the plans of Editor Franklin, namely, in the choice of a successor who was to take his seat on May 12th. This was a young lawyer, John Dickinson by name, and of almost the same age as Mr. Bryan. He was the son of a Maryland Judge and in 1750 began the study of the law under the distinguished lawyer, John Moland, later pursuing his studies in the Temple in London. He had been admitted to the bar only in 1757, but, as he had inherited means, was able to live the life of a student and country gentleman, known to be deeply interested in the subjects of history, especially the political and constitutional field. He was content to be an observer until the mid-winter meeting of 1762-3, during which time one or two matters of interest came up that may be noted at this point: The Assembly on May 12th ordered the whole of the "State House Square," as this purchase made it,



bought to Walnut Street, and they received a petition from merchants of Philadelphia pointing out that both New York and Maryland had opened up transportation to the back country gained by the war and proclaimed British territory by the King, and suggesting a route by way of the Susquehanna to the Ohio River and Great Lakes. News was also received on September 21st, that Editor Franklin was on his way home and had left affairs of Pennsylvania in the hands of Richard Jackson of the Inner Temple, the one whom Lamb in his *Elia* describes as a bencher and Johnson said should be called the "All Knowing," instead of the "omniscient Jackson," as was common then, because the latter belonged to the Supreme Being alone. He was standing counsel for the South Sea Company, one of counsel for Cambridge University and law officer of the Board of Trade, and, incidentally, a native of Dublin. If Parliament had listened to his counsel they would have avoided much disaster in America.

On January 11, 1763, Franklin, Galloway, Dickinson and others were again present in Assembly, and things began moving. The Assembly, during February and March pay great honor to Editor Franklin and his co-agent, Mr. Charles, and on April 2nd, adopt the suggestion that Mr. Jackson be agent in full charge. Governor Hamilton, on January 18th, had said that the £100,000 supply bill of 1759 must now be modified as Agents Franklin and Charles had promised, but it was retorted, on February 25th, that as no injustice had been done, no change was necessary. The dead-lock continues, but the Governor's announcement on July 5th, of the close of the continental war, was one source of relief at least. On September 27th, it was, that a petition from Mr. Bryan and two other prominent merchants, already referred to, concerning an inmate of the debtor's prison, first brought his name before the Assembly officially.

During October a new Assembly election was held, but as the Governor noted with despair it was much the same as for years past. On the 14th, however, occurred an event of hope to him, namely, in the leaving of Editor Franklin off of the committee of correspondence with Agent Jackson,

and the placing thereon of the two brilliant gentlemen lawyers, Galloway and Dickinson, a compromise, but not so much of a compromise as Editor Franklin's friends were to discover. This was also followed on the 31st of that month by the additional and somewhat disconcerting arrival of Governor John Penn, grandson of the Founder, who had been over in 1753 as a member of Council and also of the Albany congress of the following year. He was a wise and vigorous executive, but was sent over because Governor Hamilton, while he held the Assembly at bay with unusual skill and good nature, was not partizan enough of the Proprietary. His appearance was therefore an encouragement to the rising reaction against Editor Franklin's anti-Proprietary attitude, and on November 21st, he received evidence of it in a formal greeting from nearly two hundred leading merchants of Philadelphia that was very significant of the probable vigor of that reaction. It was headed by the Mayor of Philadelphia, Thomas Willing, who was almost the same age as Mr. Bryan, born in 1731, educated as a lawyer in the Temple, becoming a member of the firm of Willing and Morris (Robert), probably best known merchants in Philadelphia, an alderman of the city, a Judge of its Court of Common Pleas since 1761, and altogether one of the ablest leaders of the province. And among the names that followed Mr. Willing's was that of Mr. Bryan. Among others also were William Plumsted, Thomas Lawrence, Charles Stedman, Samuel Mifflin, Joseph Richardson, William Fisher, John Baynton, Samuel Wharton, Chas. Willing, Jos. Wharton, Jr., Samuel Purviance, Robert Morris, William Morris, Clement Biddle, Thomas Wharton, John Sayre, William Morrell, Cadwalader Morris, Enoch Story, Wm. Bradford, Geo. Clymer, R. Meredith, Chas. Coxe, Joseph Redmond, John Bayard, Benj. Mifflin, Samuel Clark, Samuel Meredith, James Wallace, James Chalmers, Jos. Saunders, Joshua Howell, George Morgan, George Roberts, Henry Keppele, James Mease, Charles Meredith, John Gibson, John Cadwalader, Thomas Mifflin, John Murray, Thomas Montgomery, Benj. Levy, Cornelius Bradford, Wm. Henry, John Biddle, Buckridge Sims, William Pusey,

Wm. Gibbons, John Ord, James Gordon, Townsend White, Wm. Ball, John Allen, John Nixon, Thomas Bond, Jr., Charles Thomson, Michael Hillegas, John Chew, Tench Francis, and others. They bespoke his holding the principles and purposes of the Founder, his grandfather, and seemed altogether pleased at the new situation. And most of these were among the first citizens of Philadelphia and destined to be distinguished later on.

The beginning of 1764 brought reproof of Pennsylvania from the Crown, through Lord Halifax, because of General Amhurst's complaint about the supply bill dead-locks, but the Assembly is not disturbed and intimates that the General prevaricated. On January 12th, Governor Penn laid his instructions before the Assembly and it was plain that he was to be, what, in modern political parlance, is called a "stand-patter." The custom of the Assembly was to have closed doors, except at hearings, and they talk plainly among themselves and to the executive, so that when, on March 8th, the Governor objects to the supply bill on the usual grounds, they tell him he is merely standing on a certain special definition of the Privy Council order anyhow, and that they now know why he displaced Governor Hamilton. On the 24th the Committee on Grievances reported and it was the final gauntlet and ultimatum to the Proprietary. It used such terms as the "load of obloquy and guilt" of the Penn family, and assure them that "artifices to inflame the public" won't avail them. There are twenty-five heads of grievances among them being that the Proprietary have no legislative power, for the Governor only has it; instructions therefore are illegal, and the cause of all delay; no injustice to Proprietary estates has been intended;<sup>1</sup> the Proprietary and their deputies have received near £80,000 in forty years from the Assembly; present Proprietors have tried to take

---

<sup>1</sup>This referred to the fact that when the Denny bills were before the Privy Council for royal approval on September 2, 1760, and six of them were disallowed, the seventh was allowed to stand on the assurances of Agents Franklin and Charles that if they worked injustice in the taxation of all estates, especially those of the Proprietary, the Assembly would pass the amendments suggested by the Privy Council. The Proprietors accepted it on that basis, but now the Assembly, as judge, declared the £100,000 supply taxation bill of 1759 (or 2nd Sept., 1760) did not work injustice. The difficulty now was that in the new bill Governor Penn wanted the language of the Privy Council inserted instead of the Franklin party's interpretation of it.

away liberties; their exorbitant demands for lands drove people to other states; their avarice demanded that their lands be not taxed nor their quit rents, forcing the Assembly to get all these decided against them at expense and while fighting for their property against enemies; they even wanted judges commissioned at pleasure, instead of during good behavior; they misrepresented the people to the King; the Assembly give notice that they will not let this executive appoint officers and so increase Proprietary power, nor will they accept the Governor's definition of Privy Council terms. They assert that the growing power of the Proprietary is dangerous in the extreme, and they propose appealing to be transferred to the Crown! They order it published. On May 18th, Governor Penn still "standing pat," petitions to the Crown appear, asking that the only two remaining Proprietary governments in America be taken over by the Crown, because it is impossible for such governments to operate from the nature of such governments. Even the Quakers joined in the petition. The following day young Mr. Dickinson was added to the Grievances Committee, and on the 23rd petition was ordered to the King, while more petitions came in from various counties.

Fortunately, Mr. Bryan's interpretation of these wants are available. Under date, Philadelphia 21st March, 1764, he says: "The Governor charges the Assembly with artifice in framing the Supply bill sent up to him and refuses to concur, so that there is little prospect of it passing." On April 13th, he says further: "Our Assembly have adjourned until May, without making provision for the support of the provincial troops or for entering into the vigorous measures proposed by the King's General in order to bring the shocking calamities our frontier people labor under, to a speedy conclusion. You will see by the printed papers the violent lengths they have gone in certain resolves against the proprietaries and their administration. This is all artifice, for our people began to grow very uneasy and dissatisfied with the Quaker measures; and those of our five frontier counties to cry out for a redress of grievances, and particularly for more representatives (of their counties). In short,

being accused by General Amherst and Sir William Johnson of interfering in Indian affairs, and likely to be ousted here, they [the Quaker leaders] found it expedient to raise a loud noise enough to drown all others; and nothing appeared so [safe ?] to take, as a dispute with the Proprietaries, and accordingly they contrived to differ with the Governor on the stale subject of his share of the taxes, a mode for which had been settled by the King and Council in a very clear manner. However, those who are determined to differ seldom want a pretext, and, accordingly, the meaning of the Royal decree was brought on the carpet and said to be doubtful and that words must be added to give it a reasonable explanation. The Governor, considering the decree as an instruction to him, refused to admit the explanation. On this the house, after voting the Proprietary government a nuisance, adjourned, with great seeming heat, to consult with their constituents on the necessity of petitioning the King to assume the immediate government of the province. Though the Quaker politicians were full in the plan, yet Friends in general show much reluctance to this violent and hasty measure, and indeed, whether they be serious or not, it is playing a very deep game. Our superiors in Great Britain would like to have the new modelling of the charter provinces, and, though we should crave only for a removal of Messrs. Penn's perpetual right of government, yet the opportunity might be laid hold on to make many alternatives not much to our liking. Sensible of this, the measure has been received very coolly by a great majority of the inhabitants. And though great artifice and industry are used by the promoters of this business, no great progress is made in procuring subscribers to the petition, especially of the more thinking part of the people, who view it as an artifice entirely, to shift the scene here and on that side, if possible, to make people believe that the Proprietaries, not the Quakers, are at fault. But all [of it?] will not do; and they are exceedingly afraid that an act of Parliament will pass to disable them from sitting in Assembly and [they] scarce know how to take any steps to ward it off. The present clamor too much hurt them

with the ministry, as the Proprietaries are only urging the Royal decree.

“Finding the backwardness of sober people to embark in high-flown, rash schemes, they begin to wish, 'tis thought, they had passed the bill (for a supply); and to prevent present inconveniences from rising to a greater height, they take pains to keep the provincial soldiery in humor until the Assembly shall meet again, which is in May. The confusion brought on by these transactions is fed and heightened by pamphlets, which come out almost daily, those on the side of the Quakers abusive and impertinent, tending to a shift in the scene, and the other side pushing home the grievances of the frontier people in the plainest terms and so unanswerably that the Quakers have no game left to play, but to raise a bustle great enough to call off the public attention. Even prints appear, in one of which an Irish settler is represented as ridden by a Quaker who muzzles and restrains him from using his musket against an Indian who is destroying his house, &c., and the Quaker leads a German by the nose, to express the artifice by which the High Dutch have been retained in their interest.

“These things are doing in town. In the country the petitions for a change of government are less liked, especially as you approach the frontier. On the contrary, petitions, the same in substance with the Remonstrance of the Paxton people (or insurgents) are signing and coming down addressed to the Governor and Assembly. What scene will open when they meet, is hard to say, but the tottering cause of the Quakers requires that some new clamor be raised, some popular bustle be made to arouse and divert the public attention from the right object. But whether all this will do is very questionable, as the present artifice is so thin as to be too generally seen through. They are exceedingly artful in these things and equally industrious in carrying them into execution. Dr. Benjamin Franklin hath gone deep with the Quakers into this business. He is much offended with the little notice which Messrs. Penn took of him in Great Britain and resents it much; but as he is an officer under the Crown (Postmaster

General) and his son another, it would appear very ill-timed and imprudent in him to oppose the administration and keep up so hot a contention, as it is well known that he proposed this scheme of a change of government and is perhaps the only man that is serious in it. Possibly he may think he acts more in the views of the Ministry by playing this high card, than if he coincided with the decree. However that be, it is certain he never could have worked up the Quakers to this in any other circumstances. They made the Proprietaries a butt, indeed, when it was necessary to shift off the clamor of the people against their holding places in the Assembly, in time of war, by raising a greater against the Penns; but [they] never seriously intended to part with the Proprietary government, as appeared very plainly some years ago, when, having pushed matters as far as that they feared the Penns would, in disgust, sell their rights to the Crown, tired with being thus baited—I say, the Quakers, as a religious society, addressed them in very affectionate terms and begged they would not part with their right of government, assuring them that they had no hand in the debate &c. Some people suspect they will act the same disingenuous part over again now.

“These contentions are extremely unreasonable and even cruel, as our fellow-subjects on the borders are in a great measure abandoned to a relentless enemy, and many, when they lie down, have great cause to dread they shall not rise in safety. Some think the Quakers are not displeased at this, as it reduces other people not of their society to some proportion with them, and [they] urge the Quakers’ conduct in raising jealousies in the minds of the Indians tending to make them believe the Proprietaries had cheated them.

“But the differences in this province are hurtful also to the rest. The Ministry complain of the difficulty of getting men and money raised by the colonies, seasonably and connectedly, and at this very time are devising taxes and funds to support troops at our cost. Such ill-timed disputes give countenance to these schemes and will force even the milder part of our Superiors into measures for our preservation, which may, in their effects, be very vexatious. I fear Pennsylvania will give her sister colonies cause to curse her.”

Two weeks later, on April 26th, he continues his illuminating comments. "My last told you," he writes, "that our Assembly and their props, the Quakers, driven into difficulties by the effects of their own paltry schemes and temporary expedients, for some years past, had been induced to strike at the Proprietary jurisdiction and to talk of asking a royal government. Different motives have led the proposers and encouragers of this scheme to this length. Franklin and some others are in earnest and have, possibly, waited for an opportunity of bringing it about for some years. He would like a journey to London. His son got his government of New Jersey from Lord Bute, and perhaps the supposed service to the Crown of ruining a Proprietary government, much censured everywhere, may be rewarded with the post of King's Governor. His dependants then have the way open to offices of profit in gift of the administration. As to the consequences to others, or the body of the people, politicians, who have self-interest in view, cannot be expected to attend to them. Great numbers of Quakers, latterly, concur in this petition. They would fondly have drawn in others and stood clear themselves, knowing that, if they could fix an odium on the Proprietaries by the vote of the more disinterested part of the people, the blame laid on themselves would be lightened if not transferred, and they could stand neuter in the business and prevent the petition from being effectual by interposing with and for the Proprietaries &c. But as the proposal for a change of government was new and ran against popular prejudice, and, with considerate people, was looked on as dangerous, it being impossible to say how far the present policy of the Ministry would lead them in new-modelling the government of a province, whose inhabitants appear factious and troublesome, in their eyes and in [those of] the world. A paper is published here, said to be written by Dr. Franklin, entitled *Cool Thoughts* &c., intended to induce the people to sign the petition.<sup>1</sup> It is a very artful,

---

<sup>1</sup>This pamphlet referred to by Mr. Bryan says, on page 9—"One project is, to turn all Quakers out of the Assembly; or, by obtaining more members for the back counties, to get a majority in, who are not Quakers. This, perhaps, is not very difficult to do;" etc. Here also the author of *Cool Thoughts*



but superficial piece. There are great pains taken and every artifice employed to procure names to the petition, no matter who; almost as great as to procure votes at an election. The Quakers, finding it opposed and heavy, sign fast and fall into the views of Franklin, without having at first intended it.

"They are evidently pursuing a wild scheme and, if they can shake the Proprietary authority, must expect, as concerned in government, to fall with it. What effect it may have on others, it is hard to say; but it must not be expected that several peculiar advantages of this constitution will be continued. And all, dissenting from the Church of England, would do well to consider how far their privileges would be likely to be impaired."

On the following day he added a paragraph: "A little army is forming, to be commanded by Col. Bradstreet, in order to repel the western Indians, who disturb our forts and trade at Detroit and Mackilimakinac, &c. Sir William Johnson seems to have quieted the Senecas and other Iroquois who infested the pass at Niagara last year. But we should like to hear of his Indians having put some of the Delawares &c. to death, who have ravaged the borders of this province and Virginia. It would look more like war, and have lasting good consequences from the spirit of revenge which Indians cultivate as a virtue. This would defend us better than 50 battalions of Regulars. Sir William is mighty showy in his transactions and I would hope he does not make so much ado without grounds."<sup>1</sup>

On the 24th of May, Mr. Dickinson voiced the reaction, in his first famous address. His chief plea was that it endangered the precious constitution of 1701 and all the

---

says: "Religion has happily nothing to do with our present differences, tho' great pains is taken to lug it into the squabble." Further on he says: "Another project is, to chuse none for Assemblymen but such as are friends to the Proprietaries." He advocates immediate Royal government, and says it would not be a change of *government*, but only a change of *governor*, as the constitution of Pennsylvania has already been fixed by constitution and laws approved by the Crown.

<sup>1</sup> George Bryan's almanac diary, Library of Congress, MSS. Division. This part of the diary seems, from its wording, as if he had written it to be reproduced in many copies by an amanuensis for a numerous correspondence of a political nature. At any rate, that was his custom most of the time during the coming years of his life, and this text would be finely calculated to build up a political following of lieutenants in various parts of the state.

blessings that had come from it. He claimed that the best way would be to have a decision by the Crown on the point at issue between the Assembly and Proprietary, and that would indicate what might be expected of government under the Crown. He insisted that the good royal government of the Jerseys was because Pennsylvania was just across the river as a model and the people could not be kept on the east bank unless they were given equal liberties. The Carolinas were the only other colonies that in any way gained by being a royal province. Thus, too, this was revolution and the people had not formally elected them on any such basis. The published address at once appealed to the old love for the constitution of 1701. But Mr. Galloway promptly replied to it in published form and with the result that on May 26th, on the retirement of Speaker Norris occasioning election of his successor, Editor Franklin was chosen! At this, Mr. Dickinson, on the 28th voiced a protest, in attempting to secure permission to spread his remarks on the minutes, but he was supported only by a member from Lancaster and one from Cumberland county, against a solid wall of twenty-four votes. Mr. Dickinson's efforts, however, did result in the house ordering their agent to insist on no change in the liberties and privileges of the colonies. The house also temporarily waives a few rights and changes the supply bill so that it was passed by Governor Penn on the 30th, but he was warned by the Assembly that they proposed to have a government soon in which they would not be compelled to waive a right in order to vote a supply bill.

Summer passed, and on September 12th the Assembly considered a letter of 25th June, from Otis and others of Boston calling attention to the dangers of the Sugar Act in Parliament and of stamp duties and asking a general remonstrance. A letter dated March 24th in London and published June 4th in New York and on the 7th in Philadelphia, showed that the slowness and refusals of the colonies to give as much as the imperial government desired, had led to these measures, and that the Fifteenth resolution, regarding stamp duties in Parliament was held up chiefly

through the efforts of the Pennsylvania Chief Justice, William Allen, the wealthiest merchant in the colony, who happened to be in London at that time and had influential relations with leading men. The feeling expressed was that it would certainly pass at the next session and that the best course for Pennsylvania to take—or all the colonies, for that matter, was to call their Assemblies and vote it before Parliament did, so that when it came it would be by their consent, and so avoid a precedent for taxation from without. This situation, therefore, had entered into the fierce campaign caused by the able and acrid controversy of Lawyers Dickinson and Galloway on the proposed transfer of the colony to the Crown and divided attention, thus really aiding the reaction against the Galloway-Franklin proposal led by Mr. Dickinson. On September 18th the Assembly ordered Agent Jackson to take vigorous measures against the proposed stamp duties.

The campaign for the October elections was therefore on the issue of this proposed revolution. The public discussions revealed one most significant thing, namely, that the struggles of the last eighty or more years between people and proprietary had resulted in placing the constitution of 1701, with the laws enacted in support of it, above the provincial charter of 1681 on which the earlier fathers had hung all their liberties! The great Pennsylvania constitution won by David Lloyd and the laws supporting or expressing it, had, like the agreements of 1688 in England and laws supporting them, gone far beyond their great preceding instruments of fundamental constitution. In this campaign of 1764 no one harked back to the Charter of 1681, for while that gave the Proprietor all executive power, all judicial power except juries and half of the legislative power, the Lloyd constitution of 1701 and its supporting laws and precedents now practically stripped the Proprietary and their agents of most of the executive powers, nearly all of the judicial powers and a great proportion of their half of the powers of legislation. It was a sensational proposal therefore to endanger that constitution by a surrender of the colony's charter to the Crown and open

the question of the Crown's acceptance of this almost republican constitution of Pennsylvania. One writer, in the May 26th (1764) issue of the *Pennsylvania Journal* attempted to show that the Crown could not but accept the provincial constitution of 1701, and its supporting laws, for all of them had received royal approbation at one time and another, and that the only result would be a royal instead of Proprietary executive. But the people became apprehensive under Mr. Dickinson's leadership and made public avowal of their approval of the lone triumvirate, Dickinson, Sanders and Montgomery who had protested. "The Constitution of Pennsylvania," said the Lancaster people on August 10th to Mr. Sanders, "has for near a century been the boast and glory of our fathers and of us. We cannot therefore conceive that the Freemen of this province ever empowered or gave it in charge to any of their delegates to now frame and model this constitution, or, by any conduct and consent of theirs, risk an alteration—but to maintain and defend it in its present great rights and privileges." On September 27th, the *Journal* issued a whole broadside supplement by a vigorous writer who said: "Rouse then, Countrymen, and crush this base faction, before it is able to crush you. A set of men are proposed to you, for this city and country, who have never conspired to sell your rights; who will bring no personal animosities with them to your public affairs; who are of unblemished reputation, independent in their fortune, and not desiring to enrich themselves by impoverishing you. The gentlemen are as follows: For the county, Messrs. Norris, Richardson, Dickinson, Stritell, Kippele, Antes, Harrison and Pawlings. For the city, Messrs. Wil-ling and Bryan. The three gentlemen at the head of this ticket were former members, and steadfastly opposed the attempt to change our government. Mr. Dickinson in particular acquitted himself with singular spirit on that occasion, and though for that reason the present faction leaves him out of their ticket, as unfit for their purposes, yet nine-tenths of his constituents applaud him for having done his duty, and are too just not to show him their regard accordingly. Among the new members for the county are

two Germans of honor and reputation, proposed by their own countrymen, who have thought themselves too long denied the equal privilege of having some of their own people among their representatives in this capital county. For the city, two gentlemen are proposed of the fairest character, largely concerned in our trade, and particularly acquainted with it in all its branches.<sup>1</sup> One of them has filled the important office of Mayor, with the highest credit and most unwearied application; and the other, in sundry trusts committed to him by his country, has shown himself to be a man of eminent abilities and great integrity.<sup>2</sup> On such and so wide a foundation is this ticket laid; and though it has been industriously said that the Presbyterians were aiming at all power in it, yet so far is this from being true, that, of the ten members for this city and county, only one is of the Presbyterian denomination, and he not proposed by their own body. Nor do we find more of this denomination than usual in the tickets for the other counties. So moderate have they appeared, that though they are well entitled to their proportionate share of representatives, they have constantly declared that it is indifferent to them of which persuasion the new members are, provided the present betrayers of our rights are turned out. As for you, countrymen, you must expect many false stories propagated as usual, on occasions of this kind. But be you prepared to regard matters of known fact, and to see with your own eyes and hear with your own ears!"

The result of the election, published in the *Journal* for October 4th, showed that there had been a political revolution, but also that it was largely confined to Philadelphia, for while all but two of the anti-Galloway-Franklin ticket were elected there, but five others in the rest of the state,

---

<sup>1</sup> Advertisements of Mr. Bryan's at this period, in the *Journal*, said: "To be sold by George Bryan: Cables and hawsers, also shroud hawsers and smaller cordage made of the best hemp, ravens duck, drillings, Russia plain linens, diapers, huckabacks, and netted linens for mosquito curtains, bar iron from the north of Europe, Vidonia, Fyall and Madeira wines all fit for use, also Liverpool salt and earthenware." In the George Bryan Papers at the Historical Society of Pennsylvania is a letter of May 10, 1765, from a Mr. Gardner of Nantucket, which shows how widespread Mr. Bryan's trade was.

<sup>2</sup> This refers partly to his service on the river and bay pier and public works commission, created by the act of 17th February, 1762, in which he was still active, and on which he was to report to the coming Assembly. See close of Chapter III.

in sympathy with them, were returned: two, the whole delegation from Cumberland; one, the whole delegation from Northampton; one, the half of the Lancaster delegation; and one, the half of the York delegation—a total of only ten out of thirty-six. It was a very important revolution, however, in several respects, because it removed the majority's powerful leaders, Galloway and Franklin, and the metropolitan leadership; it also lined up Philadelphia, Cumberland and Northampton counties and half of Lancaster and York, showing Chester and Bucks leading against the Proprietary, indicating a great Quaker cleavage against the Penns, who, it may be observed, had become Episcopalian. And, so far as active leadership was concerned, Mr. Willing succeeded Lawyer Galloway and Mr. Bryan succeeded Editor Franklin.

## CHAPTER V

A

LEADER OF THE ASSEMBLY AND JUDGE OF PHILADELPHIA  
COURTS

HE SEES A NEW POLITICAL ELEMENT ARISE

1764

With the gathering of the Assembly at the State House in October, it became evident that the practically one-third new opposition, while still a minority, was yet symptomatic of a very vigorous and growing reaction that must be reckoned with. On the 17th Mr. Bryan was given the place of the defeated Anti-Proprietary leader, Editor, now generally called, on account of his new degree from Oxford and Edinburgh, Dr. Franklin, on the new Grievance Committee, and both Mr. Bryan and Mr. Willing were put on the new Committee on Instructions to the Assembly's agent in London concerning the new political menace there, the Sugar and Stamp Acts, now proposed, and which Chief Justice Allen had done so much to hold at bay, and who was now a member of this body as a delegate selected by Cumberland county.

The new instructions, in whose making Mr. Bryan had a share, were devoted mostly to the new menace in all its forms, the text showing that there were many forms it was taking, notably in forbidding direct trade with Ireland, Europe and the West Indies, which latter would make it impossible for the colony to pay its near £500,000 debt to the mother country, which such trade balances as were represented by £700,000 imports from, to £300,000 exports to Great Britain easily explained. They warned the British that interference with the colony's control over its own money was something no Parliament could possibly think right.

There was unanimity on this point, and it was ordered forward to Agent Jackson, but when they turned to the previous Assembly's instructions about a change to royal government, a very positive lineup was evident, with the ten partizans of the old constitution solidly against the Anti-Proprietary majority, which latter included four of the metropolitan delegates. Speaker Norris was the compromiser, who practically lined up with the Dickinson-Bryan-Allen party, and insisted that, while the instructions need not be recalled the Agent must not do anything that would affect the old constitution that was so treasured by the people of Pennsylvania. Even this was opposed by twelve, the minority now being one-third. Speaker Norris resigned the next day, however, and the majority elected Joseph Fox, Speaker. Then, on the 24th of October, the Dickinson-Bryan minority tried to prevent action on a proposal again to send Dr. Franklin as Chief Agent at London, but lost it, and on the 26th he was chosen by 19 to 11 and ordered to embark. Mr. Richardson led the majority and Mr. Bryan the minority.

Thereupon the minority issued a public statement of their position, under the title a *Protest*, which was published on November 1st, in Bradford's *Journal*. It was signed by Messrs. Dickinson, McConaughy, John Montgomery, Isaac Saunders, George Taylor, William Allen, Thomas Willing, George Bryan, Amos Strettill and Henry Keppele. They object to Dr. Franklin on several grounds: 1. because he is deemed the chief author of the scheme; 2. that the petition designed by most, only to bring the Proprietary to terms on taxation of estates—in which respect it was successful they understand—Dr. Franklin would force it to actual separation and danger to the whole old constitution so prized by the people; 3. because it is understood he is *persona non grata* to the Ministry; 4. because his rejection at the last election shows how thoroughly people are against him; 5. because of the unseemly haste in choosing him; 6. because his last visit, including a loss of £6000 caused by his placing of provincial funds unsafely, cost the unreasonable sum of £11,000; and 7thly, they propose Dr. Fother-





THOMAS WILLING AND GEORGE BRYAN  
who defeated Joseph Galloway and Benjamin Franklin  
for Assembly in 1764



gill, a London resident, and offer individually to pay the cost of the mission, if the agent is restrained until an express order is given him to proceed.

On November 22d Dr. Franklin replies to them, tartly: the cause was not he, but the Proprietary action; he was more loyal to the Crown than to the Proprietary, and he seems to level most of what he says at Chief Justice Allen, who, he says, describing but not naming him, had to get chosen from a frontier county to be chosen at all, while he, himself [Franklin], had been re-elected for fourteen years from Philadelphia; and he tells the Philadelphia delegation that they only won by the small margin of about a score in near 4000 votes. He waxes wrathful and refers to "religious bigots, who are of all savages the most brutish." He grows satirical over the final consent of the Penns to this taxation—"restitution," he terms it—and notes that it was not made public, although brought over by Mr. Allen in September, until a threat to send himself over again as Agent. He calls these gentlemen, protestants, "minions" of the Proprietary, having in mind apparently Chief Justice Allen and his relatives more than anyone else, to whom he ascribes whatever unfavorable attitude of the Ministry there might be. Then he tackles the Chief Justice, Justices and lawyers who libel him by omitting to tell that the Assembly had ordered it and themselves lost by panic. He tells the Chief Justice that *he* was there in the House and audited his accounts—"you," he says "my enemy for seven years." He adds that he had no salary in those six years and paid his own personal expenses, and it was the Chief Justice who proposed the £5000 compensation! He is now to take leave of his country, possibly his last leave, and "I forgive my enemies."

A reply was made to this by one who is so evidently Mr. Dickinson that it is immaterial that he did not sign it. Among other things he shows that the *city* delegates, Bryan and Willing, who displaced Dr. Franklin were returned by "a great majority," and that was the significant thing; that Mr. Allen was re-elected for nine successive years, but resigned and declined thereafter; that, among other things

replied to, the religious "bigots" were the Presbyterians, whom Dr. Franklin and his Quaker supporters thought they were doing a great favor in "permitting" "to spill our own blood and spend our own money, in the public cause." He asserts that the "ten gentlemen who signed the Protest are known to be persons of the fairest character and men of fortune, absolutely independent of the Proprietary family, holding no places under them, soliciting none, nor even likely to accept of any"—except the Chief Justice, whose trifling salary is from the Assembly itself, and who got Dr. Franklin his position as "Joint-Postmaster" General of America.

While these epistolary contests were on during this month of November, 1764, after the organization of the new Assembly, Governor John Penn reorganized the judiciary of the counties, new commissions to a number of gentlemen of high standing as Justices or Judges of the various courts. Because the court business was continually growing and would take too much time of any one or more leading citizens to sit continuously, and because the judges were not professional lawyers, and also were commissioned to sit in whatever court needed them most, as common pleas, quarter sessions, or orphans' court, sixteen members of the executive Council were given commissions, so certain of them might be on both the Council and the Philadelphia courts, serving as was deemed advisable, and twenty-two other gentlemen, for like reasons, were commissioned for the judiciary alone, the chances always being, as in the case of big committees, that a comparatively few would do all the work, and that, too, on all of the various benches. An examination of the two lists, Council and judiciary and judiciary alone, show them almost wholly of the Anti-Franklin element, the Council most strikingly so, and the judiciary proper scarcely less so, and including even the unsuccessful candidates of the Anti-Franklin party, like Judge Frederick Antis. Amongst the twenty-two judiciary commissions for the capital county, were George Bryan, John and Thomas Lawrence, Thomas Willing, Jacob Duché, William Coxe, Samuel Shoemaker, William Humphreys,

James Biddle, Peter Evans, Henry Harrison, William De-wees, and others, whose commissions were ordered on November 19th.<sup>1</sup> With so large a number a fair sized bench for any of the several courts at any particular time was almost a certainty, while at the same time certain men would prove more suitable, not only from greater legal learning, but from efficiency and personal inclination and adaptability. Furthermore the executive Council, or personal advisers, who, by the conservative element, were looked upon as the real guides of the province, could always have supervision of the courts by having some Councillor Judge preside, or, if desirable, form a large part, even a majority of a particular court session. The Councillor Judges thus became a species of judicial-executive "inter-locking directorate." It was for this reason, among others, that the Assembly, under Franklin, had tried to get the judicial commissions changed from "pleasure" to "good behavior," through a law to that effect.

The courts were all held at the Court House of 1709 at Second Street, in the middle of Market Street and facing eastward on Second. Here were held the Common Pleas, the Quarter Sessions and Orphans' Courts by the various gentlemen, as has been said, the sessions of the various courts to be non-conflicting as far as possible, so far as a given Judge was concerned.<sup>2</sup> The records of some of these courts are so rare in some cases and so defective, for historical purposes, in others, that only those of the Orphans' Court are continuous and serviceable for this period. The first sitting of this bench, after the new commissions were issued on November 19th, was on December 8th, when there appeared, naming them in the order of their name's appearance in the executive list, Judges William Plumsted and Samuel Miffin, Councillor Judges, and Judges Isaac

---

<sup>1</sup> An interesting advertisement of Judge Bryan's appeared during these months in Bradford's *Journal*: "September 6th, just arrived is the snow *William*, Captain Nixon, from Ireland, some likely *Servants*, men and women, boys and girls, whose times are to be disposed of by the said Captain Nixon on his vessel at anchor off Market Street, or by George Bryan at his store in Water Street, next door to the Honorable William Allen, Esq. A parcel of choice Waterford pork to be sold by George Bryan."

<sup>2</sup> Orphans' Court Docket, No. 7, p. 124. Of course, Quarter Sessions Courts were by special commission and were only held by Supreme Court Justices.

Jones, James Coultas, John Lawrence, and George Bryan. At the next session, nine days later, on the 17th, Judge Coultas was absent, and Judges Samuel Shoemaker and Jacob Hall were additional members. No other session of this court was held there until the following spring, 9th March, 1765, when the court consisted of Judges Jacob Duché, Jones, Shoemaker, Lawrence and Bryan; and on the 18th the same bench was present except that Judge Lawrence's place was taken by Judge Samuel Ashmead. These last two sessions had no Councillor Judges, and Judge Bryan was not present at the next three spring sessions, doubtless because of his activity in the Assembly over at Chestnut and Fifth at the Province or State House, to which attention may now be turned.<sup>1</sup>

At the January session of the Assembly, Judge Bryan was impressed into still more committee service—that on erecting a poor-house for Philadelphia on January 10th; on the case of a prisoner for debt, on the 12th; on a new election law on February 1st; one on regulating immigration from Holland and Germany, on the 6th; on regulating the bread assizes on the 7th; on the highway committee on May 15th, and on one on prisons on the 17th. He was therefore so occupied with Assembly affairs that he was unable to serve on the bench until June 17th, and only then, because of developments of the new element that was to materially change the whole political situation. At this June 17th ses-

---

<sup>1</sup>In order to have some conception of this provincial capitol, which was developing during those years, the following facts may serve: £200 was voted for finishing the state house on May 19, 1739; Carpenters Wooley and Tomlinson ask that the work be measured on 31st July, 1740; an account of the condition on June 5, 1741, showed carpenter work done, but not the windows; on May 4, 1743, the west end room was ordered completed as soon as possible; on November 29th of the same year a plan for finishing the court room (west room for Supreme Court) and the "piazzas" between the main building and the office buildings was approved and in 1744 chimney backs were delivered; the Assembly room (east), opening to the hall and Supreme Court room through a double row of arches, was so afflicted with echo, that it was ordered corrected on February 5, 1746; on January 27, 1749, a tower for staircase and bell at south side was ordered; the Supreme Court records were placed in the west office building for first time on October 20, 1750, and on October 16th of following year a new bell was ordered in Great Britain; at southeast corner, a room was ordered built on, for Assembly committees on 19th February, 1752; and on March 11th a clock to strike on the bell was ordered. August 13, 1754, the Assembly ordered the old bell to be kept and the new one paid for; 1762, Jan. 13th, clock was ordered repaired by Duffield, and during year all lots of square ordered bought; 22nd October, 1763, square "behind" the State House was ordered laid out with walks and trees; 1766, May 9th, committee ordered to report on lot purchases. This was the condition when Judge Bryan entered the Assembly.



THE COURT HOUSE, SECOND AND MARKET STREETS  
in which Judge Bryan presided from 1764  
From an old drawing in the Philadelphia Library





sion [1764] Judges Samuel Mifflin, Duché, Jones, Lawrence and Bryan were present.

This new political element was an imperial one, growing out of the close of the long period of war in 1763 and the necessity of a new organization for a greatly increased colonial empire and of provision for the great war debt. The American colonies had grown lustily and with the new freedom in the back country of the Mississippi and Ohio valleys they were to grow still more, so that, as they had been exploited in the past so that they were kept heavily in debt to the mother country, and the people's antagonism to the Proprietary governments had suggested a uniform provision for making all colonies royal provinces, the re-organizers in the Ministry proposed various new aggressive measures for the colonies, among them being the Sugar and Stamp acts, the chief characteristics of which were a mode of securing money from the colonies without their consent, and through Parliamentary power.<sup>1</sup>

Imagine a province that had been fighting as Pennsylvania had been for the old constitution and its supporting laws, which had all but made a purely republican condition, and that, too, so fully that they had been fighting, more recently, to clean out special privilege from one dark corner of it, namely, exemption of Proprietary estates from taxation; and then let them see on the horizon an attempt of someone from the outside to *impose* taxation on them! To them it would instantly appear astounding, amazing, unbelievable, and, what is more, they would instantly impale the particular offender, Parliament, without hesitation, and be aflame for preventive measures. The Stamp tax machinery, also, furnished an excellent definite object of immediate attack and also suggested a further mode of retaliation by boycott of British imports. The intensity of this new upheaval relegated the old Anti-Proprietary contest to so subordinate a place that it was practically suspended, and so tended to restore the old order, and make the ills under the Proprie-

---

<sup>1</sup>See *Life and Writings of James Wilson*, by Burton Alva Konkle, for more detailed treatment of these and similar imperial questions. Judge Bryan's career was so pre-eminently a state, rather than an imperial or national one, that these subjects are less pertinent to the narrative of it.

tary seem small indeed. It therefore served to dissipate the old division to a large extent, and yet not allay the fears of Dr. Franklin's reputed designs of independence, or, at least comparative indifference to the old constitution of 1701. In fact, the new menace of the Stamp Act became, to the whole province, an attack on their old constitution, which had long since come to replace, in the minds of Pennsylvanians, the charter of 1681 to the Founder, and to be the real basis of their liberties. This was a most curious and interesting phenomenon, for it revealed how remarkably far the colony had travelled from the basis on which they had rested in the time of the Stuart Kings and William Penn. Then they had reverted much to the founding charter of 1681, but now it was never mentioned or apparently ever thought of; now it was their own constitution of 1701 and its supporting laws on which they rested and so confidently that they never seemed to conceive of it as a secondary charter, as it technically was, although, by the mysterious processes of that curious thing, British custom, and the passage of time, the constitution of 1701 was in reality an established fundamental that no power but the people themselves could change.

Therefore, the new menace of the Stamp Act was a menace of one legislature against another and the constitution on which it rested. Some excellent papers in defense appeared after news of the passage of the act began to appear in the late spring of 1765, although, as has been seen, they were forewarned of it and expected it. One of the most thoughtful of these papers was a most conciliatory, but firm paper by "Freeman," in Bradford's *Journal*, in June. In the issue of June 20th, he says that a representative can only be one by being chosen to be one. If not, then the Assembly of Pennsylvania can assume to represent anyone in Great Britain. "The laws passed in the colonies, after obtaining royal assent, are of equal force with acts of Parliament; so that we have as really a legislative power, as the people in England; and therefore, if we were to make acts of Assembly to levy taxes upon the people of England, and obtain royal assent to them, can any man tell why those acts should not be as binding upon the people of England,

as their acts upon us?" He also says "if we had power to impose taxes upon them by force, as they now have upon us—and such a time may possibly come in future ages, as the English dominions in America are much more extensive than in Europe, they will in a few ages be much more populous, and may become more powerful; and if the King should pass an act made in the colonies, for taxing the people in Great Britain, could they make any objection to it, but what is equally strong against their taxing the colonies? but the violation of the English constitution is manifest in both cases." He says that their claim that this province is represented as much as many towns, corporations, etc., are in England merely proves that some in England are willing to go unrepresented, while Pennsylvanians are not willing. He says this is "a land of liberty (for so it was our glory to call it)." He then shows, however, that these towns are not similarly situated, because the county in which they stand are represented, and persons in them have similar interests. In the issue of the 27th, he takes up the charge of designed independence, and shows that no part of the empire is "dependent" on any other part; they have a *reciprocal* dependence, but do not derive rights from one another. "If" said he, "the independency which the colonies are supposed to aim at, means nothing more than that they claim the same natural rights of liberty and property as their countrymen in England, it is very certain such is their claim."

This paper is a good illustration of the attitude of the most thoughtful minds in Pennsylvania in June, 1765, when the House of Representatives of Massachusetts sent out invitations to the various Legislatures of the provinces to join them in meeting at New York, on the first Tuesday in October following, namely, on the 1st of that month. Speaker Fox had replied to it in recess on June 27th and during the summer, when it became evident that measures were actually in progress for sending the detested stamps over and to put them in operation on the first day of November, the Assembly met on September 10th and at once voted to send delegates to the American "Congress" and appointed

a committee headed by Mr. Dickinson, Judge Bryan and Mr. John Morton, with five others, all notably the leaders of the Anti-Franklin minority, to prepare instructions. The following day the three gentlemen above mentioned were promptly chosen delegates to this first American "Congress," as they called it, a significant tribute from the majority, and possibly a shrewd political move to get these able leaders of the aggressive minority out of the province in time for the October election. Immediately thereafter they adopted the instructions these same gentlemen had reported, which directed that they should co-operate in addresses of a most respectful character to the king, Lords and Commons, imploring relief from the objectionable acts; and to report the results back to the House.

The public feeling increased and plans of resistance were vigorously forwarded, when, just five days after the appointment of Messrs. Dickinson, Bryan, Morton and Speaker Fox, a ray of hope appeared in the arrival of news on Sunday morning, September 15th, of a change in the British Ministry. "A general joy diffused itself through the whole city," says the *Journal of Philadelphia*, in the issue of the 19th. "On Monday morning the bells began and continued ringing all day; in the evening many loyal healths were drunk, bonfires illuminated the city, and every lover of liberty gave all possible demonstrations of joy."

The Assembly was very busy closing up its work for the year previous to the election due on the 1st of October. The next day after the above announcement, namely September 20th, Judge Bryan presented the River and Pier Commission's report of operations during the last three years and on the 21st, as chairman of the Committee on Grievances, he also presented their report, followed by that on the Public Accounts, of which he was also a member. Thereupon they adjourned, prepared for the advent of a newly elected body on October 1st.

Five days later, on Thursday, the 26th, Messrs. Dickinson and Morton started for New York and on the following Saturday, the 28th, Judge Bryan followed them. He was therefore in New York the following Tuesday when the

Congress opened, and while he was there on that day the annual election was being held in Philadelphia, some features of which deserve attention before considering the proceedings of the "Congress." These were the natural men for the Assembly to send, even if they were in the minority, for Mr. Dickinson was showing ability, as a great unselfish publicist of high character and learning and Judge Bryan was no less high-minded and a recognized leader of the back counties and the non-Quaker element in Philadelphia, while Mr. Morton of Chester was a man of broad and liberal mind. The Franklin party, however, utilized the absence of these men and the hope in the new Ministry to put in a hard campaign to replace the two aggressive minority leaders, Dickinson and Bryan, the one by his antagonist, Lawyer Galloway, and the other by one of the two chief Quaker leaders, the Pembertons, one of whom was known as the "King of the Quakers," and the other, James Pemberton, scarcely less influential. The result was that Lawyer Galloway easily displaced Mr. Dickinson, but when the votes were counted for the Presbyterian, Judge Bryan, and the Quaker, James Pemberton, the unique and anomalous result was a tie, the only occurrence of the kind in the history of the colony; for it was not a contested election, as both votes were recognized as correct, and, unfortunately, equal, so that neither were chosen. A new election was ordered and held while Judge Bryan was in New York and the Franklin-Quaker Anti-Proprietary element, which had carried the Assembly overwhelmingly, found no difficulty in making the Quakers' vote pass that of the Presbyterian. So that Judge George Bryan, in the new American "Congress" at New York, chosen as one of the two Philadelphia Assemblymen, was now, like Mr. Dickinson, no longer an Assemblyman, but the first Pennsylvania and metropolitan members of the first American "Congress," more commonly known as "The Stamp Act Congress."

This gathering was by no means unanimously approved and there were many conflicting ideas as to just what it was to do or ought to do. Governor Cadwalader Colden, down at the Battery in New York, considered it almost treasonable

and he would have nothing to do with it; while, as the New York Assembly was not meeting, only their committee of Correspondence could come in unofficially. Consequently the meeting had to be held in the City Hall (or "City House," as it is called on a contemporary map) at the head of Broad Street, now the site of the Custom House. Curiously enough the first of the delegations to arrive was that from far off South Carolina. In the choice of these representatives, the Carolinian Assembly afforded as many ideas of what the proposed "Congress" might be as similar bodies elsewhere. One wag asked "what kind of a dish it would make? New England will throw in fish and onions; the Middle States flax-seed and flour; Maryland and Virginia will add tobacco; North Carolina, pitch, tar and turpentine; South Carolina, rice and indigo; and Georgia will sprinkle the whole composition with saw dust. Such an absurd jumble will you make, if you attempt to form a union among such discordant materials as the thirteen British provinces." To which a member replied objecting to the wag as a cook, but expressing confidence that a wise "Continental Congress" could prepare a dish fit for any Crown in Europe. All week informal conferences were held at the head of Broad Street awaiting a quorum. The royal governors of Virginia and North Carolina prevented their Assemblies from sending delegates and Georgia's royal executive enjoined them not to do so, while New Hampshire was also constrained not to co-operate, but on Monday, the 7th, nine of the thirteen colonies formed a quorum at the City Hall and, while most provinces had three delegates each, the two smallest, namely Rhode Island and what is now Delaware (then "The Three Lower Counties" looked upon as an appendix to the Quaker province) had but two, and only New York exceeded the usual number in having five members—a total of twenty-seven members.

They were for the most part quite as prominent in their own provinces as Dickinson, Bryan and Morton were in Pennsylvania, and many came to be famous later on—Otis, Dyer and Johnson, Cruger and the Livingstons, Rodney and



CITY HOUSE, NEW YORK  
where the Stamp Act Congress met in 1765  
From an old print in Lamb's History





McKean, Tilghman, Rutledge, and others. In Ruggles' close election as chairman, the compliment of presiding officer was given to the province which proposed the "Congress." For two weeks these delegates, nearly all of whom were limited in their powers somewhat as the Pennsylvanians were, worked over a draft of resolutions in secret, from drafts said to have been made by both Cruger and Dickinson, but, as is usual in such struggles of compromise the final result reported and adopted on Saturday the 19th, was the work of many hands, probably Dickinson's chiefly. This acknowledged: 1. Allegiance to the Crown and "due subordination" to Parliament; 2. Claimed all rights of British subjects; 3. Avowed no taxes could be imposed without their consent; 4. They cannot consent in Parliament; 5. That their organ of consent is their own provincial legislatures; 6. That people of Great Britain cannot grant provincial property; 7. That trial by jury is an inherent right; 8. That the Stamp and other acts subvert rights and liberties; 9. That the payment of the duties are absolutely impracticable; 10. That compulsory trade with Great Britain is a source of wealth to the government there; 11. That the late restrictions will ruin this; 12. That only freedom and rights will produce mutual prosperity; 13. That petition is a right; and 14. That it is the duty of these provinces to call for the repeal of these objectionable acts.

Three committees were then set to work on as many addresses to Crown, Lords and Commons and they were adopted on Monday, the 21st, but they were not signed by all. For example, the address to the King as well as the rest was signed by but six of the provinces, omitting Connecticut, New York and South Carolina. It is an interesting fact, and significant, that this was a petition, not from colonies, but from the people or "freeholders and other inhabitants" of them. The same was true of the "memorial"—not petition—to the Lords, to whom they again acknowledged "due subordination," but insist on their own legislative rights and judicial privileges, the latter of which is infringed by the late Vice-Admiralty Court Acts, and ask redress. The address to the Commons, however, was a

petition and more at length pointed out these new violations of the British constitution, discriminating between general imperial acts of regulation and acts that tax or that affect jury trials. On October 24th, it was decided that these addresses should be handled by special agents to be appointed or already designated by the several colonies, after which they adjourned. They had been in session nearly three weeks and, as Mr. Dickinson had been called home on urgent personal affairs during the second week, before the addresses were finished, Judge Bryan and Mr. Morton acted for Pennsylvania in approving these three documents, and voted them sent forward to Great Britain. The three colonies that declined to sign did so merely because they conceived that their legislatures' instructions required submission to them first. Georgia and New Hampshire, while unable to take part, approved and asked that copies might be sent them to forward on their own account.

A very luminous account of the Congress has been left by Cæsar Rodney, in a letter of October 20th, four days before adjournment: "When I wrote you last," he writes, "I expected the Congress would have ended in eight or ten days from that time, but contrary to expectation, we have not yet finished. You and many others, perhaps, are surprised to think we should sit so long when the business of our meeting seemed only to be the petitioning the King and remonstrating to both Houses of Parliament. But when you consider that we are petitioning and addressing that august body the great legislative of the empire for redress of grievances; that, in order to point out the grievances it was likewise necessary to set forth the liberty we have and ought to enjoy (as freeborn Englishmen) according to the British constitution, this we set about to do by way of declaration, in the nature of resolves, as a foundation for the petition and addresses, and [it] was one of the most difficult tasks I [have] ever yet see[n] undertaken, as we had carefully to avoid any infringement of the prerogative of the Crown and the power of Parliament, and yet, in duty bound, to assert the rights and privileges of the colonies. However, after arguing and debating two weeks on liberty,

privilege, prerogative, &c., in an assembly of the greatest ability I ever yet saw, we happily finished them, and now have the petition and addresses before us, which we expect to finish in three or four days more at farthest."<sup>1</sup>

The Congress closed as he predicted, and Judge Bryan then prepared the report of Mr. Morton and himself, as, under the circumstances, they practically, became the Pennsylvania delegation, and signed all the addresses (since Mr. Dickinson had no part in them) to Crown, Lords and Commons, which were the real appeal to Great Britain, the general "fourteen declarations" in whose preparation the absent member had an important part, being for home consumption alone or reference.<sup>2</sup> The report follows: "*The Report of John Morton and George Bryan, two of the Committee appointed by the late Assembly to meet the Committees of the other British Colonies on the Continent, on the first Tuesday in October last, for the Purposes mentioned in a letter from the Speaker of the Province of the Massachusetts Bay to the Speaker of the late Assembly:*

"That, in compliance with the appointment of the late Assembly, and accompanied by John Dickinson, Esq., they, the said Mr. Morton and Mr. Bryan, proceeded to New York, and on Monday, the seventh of October, entered upon the business they were sent about, the Congress being then and there formed of Committees from the Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, the Government of the Counties of New Castle, Kent and Sussex upon Delaware, Maryland and South Carolina.

"That the said Congress agreed to Fourteen Declarations of their humble opinion, respecting the most essential rights and liberties of the colonists, and of the grievances under which they do, and must labor, by reason of several late acts of Parliament; upon which Declarations they founded a petition to his Majesty, a memorial to the Right Honorable

---

<sup>1</sup> Letter to Thomas Rodney; in possession of Stan. V. Henkels, Philadelphia.

<sup>2</sup> For the addresses with the signatures of Mr. Bryan and Mr. Morton, see *Votes of Assembly* of 4th January, 1776, where they sign as the "Committee from Pennsylvania," so that Mr. Dickinson's name does not appear on any of the addresses of the Stamp Act Congress.

House of Lords, and a petition to the Honorable the House of Commons of Great Britain, in order to obtain relief.

"That engrossed copies of those several addresses were signed by six of the aforesaid Committees and transmitted to Great Britain; and other engrossed copies thereof given to each of the Committees, to lay before their respective Assemblies,—a set of which, properly signed, together with a copy of the Minutes of their proceedings, are herewith laid before the House.

"That the Committees of the Provinces of Connecticut, New York and South Carolina did not think themselves empowered to sign the engrossed copies, till they had been laid before their Assemblies.

"That the Provinces of Georgia and New Hampshire sent no deputies, for which their reasons, transmitted to the Congress, appear in these minutes: however, they declare they approve of the measure taken and were ready to join in a united address for relief, and accordingly engrossed copies of the applications to the King, Lords and Commons were sent to them.

"That the provinces of Virginia and North Carolina, the Congress did not hear from, but engrossed copies of the petitions, &c., and a copy of the Minutes of the Congress were likewise sent to them; and their concurrence in this great and common cause of all the colonies was not doubted of, should their Assemblies have an opportunity of meeting.

"That before the addresses were finished, Mr. Dickinson was called home by urgent business, and the several copies were signed by the Reporters only, which they submitted to the consideration of the House."<sup>1</sup>

As the Assembly of Pennsylvania was not in session this report was temporarily held by Mr. Morton, who, as still a member of Assembly, was to read it at the next session. While Judge Bryan and Mr. Morton prepared for return to Philadelphia there was, in New York, a newly arrived young Scotchman from Edinburgh of twenty-three

---

<sup>1</sup> *5 Votes of Assembly*, 437. Judge Bryan, Dickinson and Morton each received £25 for their service in the Stamp Act Congress on September 20, 1766.

most earnestly and humbly intreat that your Lordships will be pleased to hear their Council in Support of this Memorial, and take the Premises into your most serious Consideration, and that your Lordships will also be thereupon pleased to pursue such Measures for restoring the just Rights and Liberties of the Colonies, and preserving them forever inviolate; for redressing their present and preventing future Grievances, thereby promoting the united Interest of Great Britain and America, as to your Lordships in your great wisdom shall seem most conducive and effectual to that important End. And your Memorialists as in Duty bound shall ever pray &c.

James Otis } Committee from the House  
Ol Partridge } of Representatives of the  
} Massachusetts Bay.

Metcalf Bowler } Committee from the Gen  
Henry Wade } Assembly of Rhode Island  
} and Providence Plantations

Henry Tupper } Committee from the  
Joseph Borden } Province of New Jersey

Geo. Cannon } Committee from the Province  
John Norton } of Pennsylvania



years, named James Wilson, who was soon to follow them to the North American metropolis on the Delaware and prepare to rival them all in the public life of the American people.

Judge Bryan found Philadelphia in a ferment over the appearance of vessels on the Delaware bearing Stamped paper and the people's course in compelling the vessels to return it. Still more excitement was abroad in his own line as an importing merchant, for some four hundred of them had become so aroused by the very next day after Judge Bryan and his fellow delegates adjourned and he returned to Philadelphia, that they signed a "Non-Importation Agreement," Judge Bryan's name appearing among the number. Three days later a meeting was called in New York and still later in Boston, so that Judge Bryan and his fellow merchants of the metropolis seem to have taken the initiative in this first great fight of resistance.<sup>1</sup> This action spread from the metropolis on the Delaware all over the land. It is notable that in Judge Bryan's city these resolutions expressly excepted Ireland from the boycott. The results were excellent and on the following January 7th, Mr. Morton read the report in Assembly, which gave them a vote of thanks on the next day and provided payment for their services and expenses.<sup>2</sup> Three months later the objectionable Stamp Act was repealed and the two great movements of inter-colonial resistance, in which Judge Bryan was so prominent, were successful. The very success of the new wave of inter-provincial feeling and conviction that carried Judge Bryan and Mr. Dickinson on its crest into the first

---

<sup>1</sup> Some historians mistaking *publication* date, for date of adoption have given New York first place; but the agreement itself in Philadelphia is of Friday, October 25, 1765, as the originals in the Historical Society of Pennsylvania show. The meeting on November 7th was the first general meeting after all the signatures were secured to take necessary measures of organization. The first meeting to adopt resolutions and appoint a committee to secure all signatures to it was on October 25th, however, so that Philadelphia took the initiative.

<sup>2</sup> The Schooner, *Charming Nancy*, Capt. John Mullaney, came into Philadelphia on Friday, 13th December with stamped clearance papers for Halifax, and this led to rumors at the Coffee House that he had stamped paper aboard. A group of men sought him out and before Judge Bryan at the Coffee House had him give oath that he had none except the ones necessary to his own movements. [*Journal* of 19th Dec. 1765.] On the 28th of December, also Judge Bryan was called upon to take the oath of two captains who had brought Stamped Paper consignments and promised to not deliver them, and they actually surrendered them to a man-of-war in the harbor.

Continental Congress as representatives of Pennsylvania, left them as private citizens when the tidal wave ebbed. It also left them in a new place of power, as recognized leaders of very high but different characters, Mr. Dickinson as the publicist and Judge Bryan as the leader of the Anti-Quaker forces in Philadelphia and especially in the new counties to the westward, who were vigilant for the liberties that were theirs under the old Lloydian constitution of 1701 and its supporting laws.



## CHAPTER VI

### THE SUBSIDING UPHEAVAL CAUSES A UNION OF BRYAN AND PROPRIETARY ELEMENTS TO PRESERVE THE CONSTITUTION OF 1701

1766

The intensity of the struggle in Pennsylvania and the other colonies during the winter season of October-April, 1765-66, is rarely realized even among historical students. The noble work of the importing merchants in refusing to trade with Great Britain through the Non-Importation agreements was but one part of it, for the stamping of documentary papers caused lawyers and all court officers to suspend all their processes, and newspapers refused to use them and, in some cases, suspended publication, embroidering their last issues in mourning for lost liberties and the freedom of the press. Courts, here and there over the colonies declared the Stamp Act "unconstitutional" and proceeded on the basis of such decisions. Every colony began to encourage home manufactures, and appeals were made to the merchants and others in the mother-country to prevent further disaster to all concerned. The public examination of Dr. Franklin and his bold and valiant defense of the colonists in Parliament served somewhat to reduce the opposition to him during the winter and spring, especially when in April the news reached America that the hated Stamp Act was repealed. The successful resistance of every secret effort, as well as public effort, to land stamps, in which the culprits were brought before Judge Bryan and forced to surrender their paper to war ships in the harbor and take oath not to try it again, gave even the British Admiralty realization that they were helpless before such an upheaval.

This uprising and Dr. Franklin's part in it, as spokesman in London, having caused the Anti-Franklin question

to fall somewhat into the background in October and so nearly restored the former political character of the Assembly, Lawyer Galloway came back as leader and when, on October 15, 1765, he secured a vote on Mr. Jackson as Agent, only Mr. Willing and two others voted in Opposition, and on the following day, when the vote on Dr. Franklin as Joint-Agent was taken, only eight opposed it, and Lawyer Galloway was put on the Correspondence Committee, and Mr. Willing took Mr. Bryan's places on most committees. The Bryan-Dickinson measures, however, were not fruitless, for the Agents in London were ordered to employ the utmost vigilance and caution in securing all charter rights, constitutional and legislative guarantees even to get an order of Privy Council confirming the Act of IV Anne on election of Assemblymen. They were also ordered to co-operate with the Stamp Act Congress then in session at New York, of which the Anti-Franklin leaders, Mr. Dickinson and Judge Bryan, were Pennsylvania's representatives, although the various addresses of that Congress, when they appeared in London would show only the names of Mr. Bryan and Mr. Morton. The curious situation was therefore afforded of Agents Franklin and Jackson following the directions of Mr. Bryan, inter-colonially, and Mr. Galloway in the matter of a change from Proprietary to Royal government in his own province, but with the Bryan party's contentions included even in that. The January session, 1766, brought out Assembly's address to the Commons also partly on the subject of the Congress, but chiefly on the laws limiting issue of paper money, in which they showed that by present laws all paper would be sunk by 1773 and that it was already causing a stringency that caused great suffering, especially because Pennsylvania paper was used to supply the deficiencies in both New Jersey and Maryland, who suffered from the same cause, the latter most seriously.

A letter of November 9th, last, from Agent Jackson said the petition for a change of government had been presented and further instructions were requested. Counter petitions, doubtless from Governor and Council, as well as Proprie-

tary were also presented, so that a letter published in Bradford's *Journal* of February 27, 1766, said they had been "read twice" before the King and Council, when it was put off *sine die*, which, to use the Lord President of the Council's own words, is *for ever* and *for ever*." "Thus," says the editor, "we hope we have got rid of this unhappy bone of contention, and that now peace, good will and brotherly love will take place." Agent Jackson's letter had in a diplomatic way indicated that the matter could be dropped now if they wished, but the Assembly had no notion of dropping it, but, on the contrary wished it pushed, but with provisions indicated. It had become plain, however, that the British infatuation with their new theory of colonial constitution and their tenacity in adhering to it raised serious questions as to the relative importance of this and the Anti-Proprietary proposals, for, in the recent upheaval, the Assemblies in the Royal provinces had, as a rule, fared much worse than in the Proprietary ones. The persistence of the Franklin-Quaker party was, therefore, probably of the nature of a club to hold over the heads of the Penn family. Dr. Franklin, however, was taking measures to reassure the Bryan-Dickinson party by getting a report on certain laws, including the vital one to the constitution of 1701, the Lloyd law "*An Act to Ascertain the Number of Members of Assembly, and to Regulate the Elections,*" certifying anew to their being established law—a result reported by the Doctor in a letter of January 11, 1766, and read to the Assembly on May 6th. On June 3rd, Governor Penn formally notified the Assembly of official notice of the repeal of the Stamp Act in a royal communication, in which is also expressed appreciation of Pennsylvania's course and congratulation on the Governor's marriage to a daughter of Chief Justice William Allen. With this close of the political upheaval which brought Judge Bryan into inter-colonial and recognized public leadership, attention may be turned to his private life.

It may be recalled that up to and including the year 1764, Judge and Mrs. Bryan had four children, Sarah, Samuel, Arthur and Frances, and that they were members of the

Second Presbyterian Church organized by Whitefield and presided over by Rev. Gilbert Tennant, one of the greatest preachers ever produced in America. Whether the death of Rev. Tennant on July 23, 1764, caused Judge Bryan to look elsewhere for a pastor or not, the family did decide to join the older First Presbyterian Church of which there were two most able and scholarly men pastor and associate. It will be worth while to note one of these men, particularly, because he was to be closely associated with Judge Bryan in public affairs in the future. This was Dr. John Ewing, who, at this time, was a man of almost exactly Judge Bryan's age, having been born in 1732 in Maryland in the Scotch-Irish Presbyterian settlement about Nottingham. He was educated at the Academy at New London, Pennsylvania, under Rev., later Dr., Francis Alison, a scholarly man now sixty years of age and his associate pastor of the First Church, and the rector or Principal of the Academy of Philadelphia the very year Judge Bryan came from Ireland, the ancestral home of Dr. Ewing and the native country of Dr. Alison. With the erection of this Academy into the College of Philadelphia, Dr. Alison had become Vice-Provost and Professor of Moral Philosophy, and Dr. Ewing, after graduating from Princeton College and having studied theology under Dr. Alison and become a member of the faculty of the College of Philadelphia at Fourth and Arch Streets, was in 1759 unanimously chosen pastor of the First Church. Since 1704 this church had been located on the south side of Market Street at the corner of Bank Street, in a buttonwood grove. Dr. Alison, the associate, was said by a president of Yale to be the greatest Greek scholar in America, and Dr. Ewing, by an equal authority in Princeton, was said to be unequalled in America in a command of all departments of learning taught in the colleges of that day. With these two scholarly members of the faculty of the college of Philadelphia as pastor and associate of the First Church, at the death of Rev. Tennant, it was not strange that Judge Bryan and his family found it more to their liking than the one which had suffered such a loss in the passing of probably the greatest preacher in America,

and especially since these two men were quite as progressive in belief as the followers of Whitefield. And therefore when his fifth child, and second daughter, Mary, was born about two months after he left for the Stamp Act Congress, namely, on December 2, 1765, she was baptized soon afterwards by Rev. Dr. Alison.<sup>1</sup> About two years later a fourth son was born on November 3, 1767, and given his father's name, George, Jr., who was destined also to have a part in Pennsylvania's public life.<sup>2</sup>

Besides his family life and his business as an importing merchant, Judge Bryan gave conscientious attention to his duties in the various courts. He did not appear in the Orphans' Court at all during the fall, winter and spring of 1765-6, as he was no doubt more frequently assigned to the civil branch, whose records are not helpful in determining those details. In June, 1766, however, he was again on the Orphans' Court bench at the Court House at Second and Market Streets, and served a little over half the sessions during the rest of that year, while in the following year he was on this bench during most of its sessions. Indeed Judge Bryan was proving himself as able as a jurist as he had shown himself as an importing merchant and political leader.

The Assembly, chosen at the October election of 1766, was overwhelmingly a Franklin-Quaker one, so much so that Lawyer Galloway, their vigorous and able leader, was also made Speaker and Chairman of the committee on instruction to Agents Franklin and Jackson. They still urged the change to Royal government for the province, but their urgency for removal of restrictions on paper currency and the ban on Irish trade was so very important, and the general Ministerial attitude to colonial theory so alarming, that their original subject was of necessity subordinated to these, and so made more of a feeling of security amongst the Bryan element. This was in part also due to Lawyer Dickinson's intuitive concern for the new Ministerial theories and also to an aggressive personality in England

---

<sup>1</sup> Records of First Presbyterian Church, copies at Historical Society of Pennsylvania, p. 255.

<sup>2</sup> Records First Presbyterian Church as before.

who had been powerful enough to secure a modification of the constitution of the Colonial Board of Trade and then accepted a position in it in August, 1766. For, while the Stamp Act had been repealed, the policy that prompted it was becoming more organic and accepted every day.

This aggressive personality was the Earl of Hillsborough of the Irish peerage, an Englishman so elevated the last year Judge Bryan was in Dublin. He had entered the House of Lords in 1756 and in 1763, on completion of the treaty which gave Great Britain so great an addition to her colonial empire, he was made successor to Lord Shelburne, as President of the colonial Board of Trade and Foreign Plantations, and was designed to be an organ of the new colonial theories; so that even Mr. Pitt, when he came to power, persuaded him to remain, although he resigned in December, 1766, to become Joint Postmaster General. This was only temporary, however, for, during 1767, the new colonial constitutional theories were further consolidated and furnished an organ in the new office of Third Secretary of State for the Colonies, to which he was promoted in January, following. Dr. Franklin knew these things and was as much concerned as Mr. Dickinson, so that this ominous element was like a cloud no bigger than a man's hand on the horizon, but whose significance was understood. Hence the allaying power of it in the aggressiveness of the Anti-Proprietary activities.

The activities of the Assembly therefore had much to do with the great growth of the province. The need for more currency was so great that a Merchants Association agreed to take their members' individual notes as currency and it had become so widespread a practice that by January 12, 1767, the Assembly was forced to take action and did forbid it on February 4th. The great growth of settlement in the frontier counties forced other subjects to the front, such as a greater provision for the administration of justice by men of some learning in the law; for the judges in these counties were still less fortunate in legal learning than those in the older counties, so that recourse was had to a court created to meet somewhat similar needs in Great Britain,

namely, the *Nisi Prius* courts, to be held by Justices of the Supreme Court of the province, who were to divide up the province among them and hold courts for more important cases. After considerable disagreement between Governor Penn and Lawyer Galloway's Assembly, it was passed on May 20th, and for many decades became probably the favorite court of the province and state. Scarcely less important was the trouble caused by settlement of whites on Indian lands which made preparation for a new treaty and land purchase an imminent necessity, and was to result in the purchase of November 5, 1758, covering a considerable share of the northeastern and southwestern parts of the province with a narrow connecting strip between.<sup>1</sup>

The year of Stamp Act excitement, 1765-66, had produced a great intellectual stimulus and, as is often the case, served to bring to more rapid maturity, the new generation of able young men such as Dr. John Morgan, Charles Thomson, James Wilson, Rev. William White and others of that age in Philadelphia. It will be recalled that the dozen young men, of whom Franklin was one, in 1727, when they organized the secret improvement club called "The Junto," designed it for self-education of men just become of age. As they soon had applications for new members, but wished to preserve the small club qualities, each one organized new clubs with new names in 1736, and after. By 1743 they developed separately a still larger organization after the manner of learned and scientific societies abroad, and named the American Philosophical Society. By 1751, when Judge Bryan was of age, another brilliant young Irishman, Charles Thomson, of about the same age, also a student of Dr. Alison at the old New London Academy, had come to Philadelphia as a tutor in the Academy of Philadelphia and Franklin aided him in establishing a branch "Junto," the only one apparently to be given the same name as the original.<sup>2</sup> By the early 60s, however, this able and

---

<sup>1</sup> For map see *Life and Times of Thomas Smith*, by Burton Alva Konkle, p. 28.

<sup>2</sup> See Dr. Robt. W. Patterson's Centennial Address on the American Philosophical Society. See also the Report of 1914 by the American Philosophical Society, which includes a paper by Prof. E. P. Cheney as a minority report, whose reasoning appeals much to the present writer, as to the existence of a secondary "Junto."

scholarly young man had also become a Philadelphia importing merchant and it has to be confessed that these ambitious societies here described had sunk somewhat into a period of innocuous desuetude, also to be reinvigorated by the inter-colonial upheaval of 1765-66; for, in May, '66, the Thomson "Junto," also, like its older namesake, reorganized into a more pretentious learned and scientific body, and called the new one "The American Society for Promoting and Propagating Useful Knowledge, held at Philadelphia," or "The American Society," for short. The new name, unlike that of the American Philosophical Society, which was merely American in contra-distinction from European, was definitely chosen as American, in the sense of inter-colonial or continental, headquartering at "the center of the colonies," but "to promote the interests of our country" and "raise her to some eminence in the rank of polite and learned nations"—so that the new inter-colonial consciousness was definitely expressed in this new body, and they increased in numbers during 1767, especially among younger men of ability and even called Dr. Franklin to join them. It thus early showed itself to be in sympathy with the Anti-Proprietary element, as well as the inter-colonial element. Indeed its activities were so marked, with men like Dr. Morgan, Thomson, Mifflin and others of like character, that the older body, The American Philosophical Society, began to rehabilitate itself on distinctly conservative and Proprietary lines: Governor John Penn was secured as its patron and by November, 1767, they decided to anticipate the other society and during the following January elected no less than forty-four new members, "including men of the highest rank and most distinguished talent in the colony," says Dr. Patterson. Among those chosen on January 12, 1768, was Judge George Bryan of the Stamp Act Congress, and under the Governor's patronage the State or Province House at Fifth and Chestnut Streets, was their regular place of meeting, while the College of Philadelphia was to be their laboratory for experiments. On February 9th, ex-Governor James Hamilton became President; Drs. Shippen and Bond, Vice-Presidents; and Provost



Dr. Smith, Rev. Professor John Ewing and Dr. Charles Moore were Secretaries. Judge Bryan's pastor, Professor Ewing, it was, who proposed that they prepare scientifically to observe the transit of Venus the following year.

Something was happening during these winter months preceding this election, that was greatly to affect these two politico-scientific bodies. It will be seen that the avowed Proprietary element, like the Penns, Hamiltons, Allens, *et al.*, were dominant in the Philosophical Society and that those conservative lovers of the old constitution of 1701, like Judge Bryan, who were not Proprietary in any other sense, were naturally forced to coalesce with them in the face of the overwhelming Franklin-Quaker party in the Assembly, with whom the American Society was in sympathy. But, as the Stamp Act upheaval of 1765-66 had served to weld them all together temporarily, so the Hillsborough tenacity for the new colonial theories, that was felt more and more during '66 and '67 was now destined to have a similar influence in the relation of those two bodies, and by a man who was a member of neither one, namely, Judge Bryan's fellow delegate to the Stamp Act Congress, Lawyer John Dickinson, who, on December 2, and 3, '67, issued in various papers *Letters From a Farmer*.

These appeals were forced from him, he said, by the fact that *two* sessions of Assembly of Pennsylvania had occurred and with no notice of the Parliamentary suppression of New York's Assembly because they had not voted as much money as Parliament thought they ought! "The cause of *one* is the cause of *all!*" A week later he pointed to the unconstitutionality of the recent paper and glass act as also *revenue* measures, and before Christmas he warned Parliament that they would be resisted like the Stuart tyrants and would have another Stamp Act conflagration about their heads if they did not take heed. Just before New Year's day, '68, he showed them how for a hundred and fifty years scrupulous respect had been shown for the right of colonial self-taxation and early in January showed that if the paper and glass act was to stand the colonists were "slaves." Before the end of the month he gave a

luminous view of how, ever since 1688 the British government had been attempting to subdue the colonies by removing from them "the power of the purse" by trying to make colonial executives independent of Assemblies and refusing to make the judiciary independent of the executives, and now actually *asserted* the policy in an act following the Stamp act repealer!

By this time these *Letters* had reached and roused all the colonies until they were aflame and almost as much united as in the Stamp Act upheaval. The young men of the American Society concluded to propose a union of the two, if it could be done on a basis "equally honorable to both," and on February 2nd, just a week before the older society's election, sent their proposal. The older society conceived of this as an application for individual membership, instead of a union, and, suspending one of its laws, elected the whole body of the American Society to membership! This proceeding the younger body declined to recognize, and nearly a year passed before the older society, on November 15, 1768, began negotiations that resulted in a union "equally honorable to both," and on January 2, 1769, the combined Society held its first meeting and election—a significant event. Of the two hundred and fifty members, about half or one hundred and twenty-four were Philadelphia county residents, and eighty-nine votes were cast, which showed the vital nature of this event. The result was that the American Society won the presidency in Dr. Franklin, and Governor John Penn declined to be patron, in tart terms.

Within a month of this election, namely on February 6, 1769, the Merchants of Philadelphia, who had long been urged by Boston and New York to join a new non-importation movement, but had hesitated, to await the results of the work of the two Pennsylvania agents in London, now took preliminary action, which was completed on March 10th, Judge Bryan presumably being among the number as before.<sup>1</sup> The diversity of ideas, in different cities and in dif-

---

<sup>1</sup> Boston had urged New York to join them on August 11, 1768, and the New York merchants, led by Murray, Sears, Broome, Franklin, Cruger, the

ferent elements of the same city, as to the details of putting non-importation in operation and how much non-importation should be undertaken, made this a far less successful enterprise than before, but led to a remarkable community of correspondence between the leading men of the various colonies, for more than two years, that cannot be overlooked as an element of inter-colonial or American union, and Judge Bryan was one of the leading members of these commercial unions in resistance of the new colonial theories being put in operation by Hillsborough.

But the conflagration caused by Lawyer Dickinson's *Letters* was not confined to the Merchants Associations. Within four months from the appearance of the first *letter* in November, '67, Massachusetts Assembly urged the other Assemblies to united action and on April 21, '68, Lord Hillsborough wrote warning the other colonies, in the name of the King, against that colony's "most dangerous and factious tendencies" and urging them, and, in Pennsylvania's case, demanding of Governor Penn that if the Assembly did not heed the warning he, the Governor, should prorogue or dissolve them! But, on May 9th, Virginia's House of Representatives had also addressed the Assembly at Philadelphia in terms as positive as that of Massachusetts. By September 16th, the Assembly announced that no Governor had a right to prorogue or dissolve them, and they were the sole arbiters of adjournment, and on the 22nd voted petition to King, Lords and Commons, and sent vigorous instructions to their London Agents. They recognized the Hillsborough policies of removing all control of the Assemblies over the executives and their appointees during pleasure, the judiciary. They also asserted their rights of correspondence with other legislatures, and these were undoubtedly largely written by Speaker Galloway. The King's part in this, and his course in the royal colonies of New York and Virginia, gave good ground for apprehension

---

Beekmans, Waltons and one or two others, had in turn urged those in Philadelphia, addressing Willing and Morris, Drinker, the Mifflins, Wharton "and the rest of the Merchants of Philadelphia" on September 1st following. Letter in the Historical Society of Pennsylvania. The records of this association are not available.

lest a change from the Proprietary would be a movement "from the frying-pan into the fire," and really strengthened the position of the Bryan element, whose main purpose was the preservation of the constitution of 1701 and its supporting laws. Therefore the Bryan element and the Proprietary, if not together, were equally in opposition to the Franklin-Galloway-Quaker party.

## CHAPTER VII

### MERCHANT BRYAN FAILS WHILE JUDGE BRYAN SUCCEEDS AS JURIST AND POLITICAL LEADER

1769

If the non-importation agreements of 1765 had been very trying to the merchant importers above all others, that of March 10, 1769, was far more so, especially with those whose trade, or principals, were largely with or in Ireland, on which there was something of a ban and had been since 1766. There is some evidence that this affected Merchant Bryan both at Philadelphia and in Dublin. As his advertisements grow fewer and fewer, they indicate his activities on various side lines. On March 13, 1766, he advertises for a paper-maker to go to Connecticut, and on January 1, 1767, his name does not appear in an extensive list of merchants of Philadelphia who refuse to accept the private notes of individuals circulating as money. On February 5th he appears to be acting also as agent for a Nova Scotia colonization plan, while on May 14th, now located in Front Street, near Walnut, he advertises as an exporter of lumber for ships, next door to William Coleman's. By July 9th, he announces for sale the time of a very considerable lot of servants just arrived. After this variety of advertising and the change of his location, it can hardly be other than very significant to find no more advertisements of any kind, not only for that year, 1768, 1769, and 1770 but ever again; while on September 19, 1771, there appeared a notice of a Sheriff's sale of George Bryan's lands in Tinicum Township to take place on the 30th of the same month. His mercantile failure, while well known, apparently cannot be located more nearly in time than is here indicated. But that it was due to his own fault, as many opposed to him politically assumed, is known to be otherwise, and vouched

for by no less a person than Professor John Ewing, his old pastor and sometime Provost of the University of Pennsylvania. He said that Judge Bryan had told him that it was due to the failure of others in Dublin with whom he had important connections. A writer in the *Pennsylvania Gazette*, in a sketch of Judge Bryan, which made use of a sketch by Dr. Ewing, speaks of his "extensive field of commercial enterprise, but the misfortunes of persons abroad unexpectedly inducing him to withdraw" from it, "he retired, with only a sufficiency to pay his debts. From this period, he became more than ever devoted to an honest and honorable simplicity, worthy of the best days of the old republics. Inattentive to private pursuits, his activity and intelligence were now almost wholly directed to the public weal."<sup>1</sup>

A more clear idea of Judge Bryan's character, as described by Dr. Ewing, is desirable at this point: "Formed by nature for a close application to study," says the distinguished Provost of the University, "animated with an ardent thirst for knowledge, and blessed with a memory surprisingly tenacious, and the uncommon attendant, a clear, penetrating and decisive judgment, his mind was the storehouse of extensive information on a great variety of subjects. Thus endowed and qualified, he was able on most occasions, to avail himself of the labors and acquisitions, the researches and decisions of the most distinguished that had finished their course, and set before him. You could therefore, with confidence, generally depend upon his judgment, as the last result of laborious investigation and mature decision. And if you add to these natural and acquired endowments, the moral virtues and dispositions of his heart, his benevolence and sympathy with the distressed, his unaffected humility and easiness of access upon all occasions, his readiness to forgive, and his godlike superiority to the injuries of a misjudging world (an imitation of his divine Master,

---

<sup>1</sup> *The Pennsylvania Gazette* of 2nd Feb. 1791. The writer has seen a letter of 1786, written in Dublin by a Philadelphian who had business relations with a brother of Judge Bryan over there, that seems to suggest that it was this brother whose misfortunes caused George Bryan's failure as a merchant importer.

who, when he was reviled, reviled not again), his inflexible integrity in the administration of justice, together with his excellent contempt of both the frowns and the blandishments of the world, you will find him eminently qualified for the faithful and honorable discharge of the various public offices which he filled with dignity and reputation even in the worst of times, and in the midst of a torrent of unmerited obloquy and opposition. Such an assemblage of unusual qualifications and virtues, . . . but seldom unite in a single man."<sup>1</sup> Another writer says: "His mind ever remained unruffled and unbroken. The firmness of his resolution was invincible, and the mildness of his temper never changed. His knowledge was very extensive: the strength of his memory verified what has been thought incredible or fabulous when related of others. His judgment was correct, his modesty extreme, his benevolence unbounded, and his piety unaffected and exemplary."<sup>2</sup> These sentiments, even allowing the discount for friendly partizanship, are remarkable tributes and portray a very high type of character, which will serve to interpret his part in coming events of a most remarkable kind.

Therefore, while Judge Bryan was giving more and more of his time to the courts, the non-importation agreements, which had become general in 1769, and were attended with great variety of opinions and a consequently large amount of inter-provincial correspondence, were causing great irritation in Parliament and appropriately aggressive measures in these colonies, which, like Massachusetts, were making some overt act that could be used as a reason for punishment. Dissolution of Assemblies and quartering of troops followed in some cases, but the persistence of the resistance everywhere and the opposition of Burke's leadership were so great pressure upon Parliament during 1769 and '70, that in March of the latter year, a vote on repeal was taken, the discussion of which revealed a general willingness to repeal all but the tax on East India tea. This was apparently because of an arrangement of the govern-

---

<sup>1</sup> *The American Museum* (magazine) for first half of 1791, p. 81-2.

<sup>2</sup> *Dunlap's American Advertiser*, 31st Jan. 1791.

ment with the East India Company, but actually because of Lord Hillsborough's policy, publicly avowed on May 18th of that year, that it had been the object of every minister since the reign of Charles II to establish a civil list in the American colonies independent of the Assemblies! Therefore, when by a vote of 204 to 142 in favor of *not* repealing the tax on tea was taken, it was adequate evidence that the policy of Parliamentary supremacy over the colonies was practically avowed. This enabled the long suffering Merchants' Associations to consider the advisability of confining non-importation to tea alone, New York leading in July and notifying the Philadelphia association, who retorted that the New Yorkers had thus, "in the day of trial, deserted the cause of liberty and your country." By August they heard of the Hillsborough determination to penalize non-importation agreements as criminal conspiracy and by September the Philadelphia merchants adopted the New York policy, and trade sprang up again, except in tea.

The Assembly during this period also saw the new menace looming up so tremendously that its instructions to their Agents were devoted entirely to it. Besides denying the Parliamentary right to tax, they dwelt upon its inadvisability as causing manufacturers to arise here, as increasing the drain of silver until debts cannot be paid at all, as making the executive independent of the Assembly, as making the judiciary not independent of the executive, when they are independent in both Great Britain and Ireland.<sup>1</sup> Early in 1769, they move again for more paper currency and the Governor again resists them, for he claims their bill for £120,000 provides for their own control of the fund. By September, 1770, the Assembly discovered the local aggressiveness of the Hillsborough measures, when they learned that the Board of Trade had captured their very able co-agent Mr. Jackson, who had resigned to become the Board's counsel. This left Franklin alone as Agent, and this situation again brought Lawyer Dickinson to the Assembly in October, 1770, with Lawyer Galloway returned from Bucks county. By February 4, 1771, the

---

<sup>1</sup> Votes of Assembly, of Sept. 22, 1768.



Assembly had Dickinson voice a petition to the King against the tea issue, but Lawyer Galloway was again in the saddle at the October election and Mr. Dickinson out, while the death of Richard Penn, Sr., caused the return of John Penn to England in May and the commissioning of Governor Richard Penn, Jr., in July, although his service was destined to be but temporary and John Penn resumed the executive office by commission of April 4, 1773.

Much of the phenomena of Pennsylvania political movement at this period was in large measure due to her great growth. The year that George Bryan settled in Philadelphia, 1752, besides the three original counties of Chester, Philadelphia and Bucks, five new counties had been organized—Lancaster in 1729, York in 1749—only three years before, Cumberland in 1750—only two years before, while two, Berks and Northampton were organized that very year. Up to that year also Indian lands had been purchased back (in a general description of it) to the Susquehanna and its eastern branch and beyond Carlisle and Chambersburg. In the twenty years of his experiences as a leading citizen and judge of Philadelphia, the Indians had been bought out except about the northwestern third of the province, in two purchases, one of 1758, covering a mountain section in the south central part, from about Bedford nearly to Sunbury, and one ten years later covering the rest with the exception mentioned. These made possible the organization of the three new counties—Bedford in 1771, including almost the western half of the province, Northumberland in 1772, a vast section covering approximately the northeastern quarter of the colony, and, finally, the last before hostilities broke out, a new one carved out of Bedford, called Westmoreland, to cover the southwestern corner about Fort Pitt, and organized in 1773, all of which may be more clearly seen in the accompanying maps. It will thus appear that it was chiefly the south half of the province which was settled, with a fringe on the northeast and a scattered element in the general region of the junction of the two branches of the Susquehanna. The leading feature of it all was the increase in population on the great highway to Fort Pitt. In

this there was a very large element of Scotch-Irish, who were chiefly Presbyterian, and who bore so large a share of the actual fighting in the colony during the late wars. Among these, as a merchant importer, Mr. Bryan had a large trade and correspondence and, should occasion arise, as was so ominously possible, when a political question should cause a greater cleavage between what might be called the old Quaker counties and the new Presbyterian counties the way would be open for very able Presbyterian leadership in the midst of the Quaker metropolis.

Before going further, it may be well to glance at the characteristics of Pennsylvania leadership at this time. Dr. Franklin and his lieutenant, Lawyer Galloway, were leaders of Anti-Proprietary and Pro-Royalist movement, until the new policy of Parliamentary supremacy made some modification. The former then became less a leader in the province and more of an inter-colonial leader against that supremacy. The latter, by nature, more Pro-Royalist than his colleague in London, now continued his leadership of the Franklin-Quaker party and sought to find a Pro-Royal solution as a compromise. He was among the earliest to conceive of a new constitution of the American colonies, such as the British had conceived for Durham and Chester; his political instincts were thoroughly British in methods of expediency and opportunism, and he was interested in the details. Lawyer Dickinson was an idealist, with a profound philosophical conception of the principles of British liberty, a sort of American Sidney, or Hampden. He was not a party leader in the sense that either Franklin or Galloway was, but was a John The Baptist, crying in the political wilderness, who arose with the crisis and became its voice—his interest and his ability largely ceased when that was over. The leadership of Judge Bryan was of a slower growth and as he grew in power and public regard as a judge, and as a man, it was largely due to his moral and intellectual character, and as representing those, who, whatever happened, proposed to hold fast to the liberties wrought out in their Pennsylvania Magna Charta, the constitution of David Lloyd of 1701 and its supporting statutes. In many

ways he reminds one of David Lloyd. Both were men of comparatively few words, but of great personal force of character and natural qualities of unforced leadership. Both had naturally legal and political minds, of unusual perspicacity in those fields. Both suffered from a certain narrowness that often comes from self-education. Both had a quiet tenacity of purpose that knew no relaxation. Both aroused intense friendships and equally intense enmities. Both were popular leaders and leaders of what might be called, as in England, the Country Party. Both absorbed the leadership of their party into their own person. Neither were brilliant, but both had great natural wisdom. Both were tremendous workers and had great administrative capacity. Both were a remarkable mixture of radical and conservative, what might be called radical conservative, radical for the purpose of conservation. Both were close to the people and were theoretically and practically democratic. It was no accident that George Bryan became the defender and conservator of the work of David Lloyd, for they saw the same great vitalities. Neither were theorists or publicists; and both saw only to within certain prescribed limits. Both had a grasp of fundamentals and so, within their limits, built solidly. They also had a profound consciousness of fundamentals as such. Friends and enemies recognized this and so their leadership came to them; it was not sought.

These were the four chief leaders of the people, as distinguished from the Proprietary. One was destined for the international field, one the British interest, one as pioneer publicist and the other, Judge Bryan, of the Philadelphia courts, as the provincial leader. Judge Bryan, as has been seen, was commissioned first in 1764 as a Judge of Common Pleas and Orphans' Court. He served in these courts in the Court House at Second and Market Streets and was one of those, who, because of evident talent for it, came to be among the few commissioned who, by a process of selection, became the real judges almost exclusively. He served under his first commission for six years, apparently, or until his second commission on June 4, 1770. He was again commissioned on April 27, 1772, so that when the Anglo-American tension

over Parliamentary supremacy came close to the breaking point in 1773, Judge Bryan had been on the benches of these courts for almost a decade, and was recognized as one of their first judges of courts below the Supreme Court and that of the Vice-Admiralty.

By 1773 another legal figure began to appear on the horizon, who was destined also to be a political figure, and Judge Bryan's greatest rival as far as the constitution of Pennsylvania was concerned, for it was in that year that he came to public attention by winning a retainer as an attorney for the Proprietary estates, the greatest legal prize for lawyers in those days. This was a young lawyer in Carlisle, James Wilson by name, a dozen years younger than Judge Bryan, who was forty-two years old at this date. The young man was a Scotchman, born near St. Andrews in 1742, and educated in St. Andrews, Glasgow and Edinburgh Universities, and he had arrived in New York just before Judge Bryan and his two colleagues, Dickinson and Morton, arrived as members of the Stamp Act Congress. He was then seeking an opening as a teacher either in Kings College there or in the College of Philadelphia, in which latter institution he was successful in the following mid-winter. Furthermore, during 1766, he became a student at law under Lawyer Dickinson and so continued for two years, but was admitted to the bar in the various counties in 1767. In education, therefore, he had no superior in Pennsylvania, or probably in any of the colonies, and in 1768 when he settled temporarily in Reading, he had won a high place in Philadelphia, for a young man, in literature, law and love, for, in collaboration with one who was to become Bishop William White, he was author of some notable papers called *The Visitant*, so notable as to displace *The Letters of a Farmer*, by his preceptor, from first page, had the prestige of a Dickinson student at law and had won the heart of the sister of the Reading iron-master, Mr. Mark Bird, while the vigorous American Society fostered by Mr. Charles Thomson, Dr. John Morgan and other young men of learning and ability, had elected him to a membership, which was soon to take him into the new com-

bined organization to be known as the American Philosophical Society. In the following mid-winter, however, he concluded to settle among the Scotch and Scotch-Irish at Carlisle, rather than among the German population at Reading, and during 1769-70 became so profoundly studious of the basis of Parliamentary claim to authority over the colonies, that when non-importation agreements<sup>8</sup> collapsed, or were reduced to include only a boycott on tea, he had prepared a paper that was destined to win him a place among authorities on colonial constitution. In addition to this, he had won a place as the greatest lawyer outside of Philadelphia by 1773 and had been retained by the Proprietary. It will be seen, therefore, that, unlike Judge Bryan, he had not been in Pennsylvania long enough to have had part in the Anti-Proprietary warfare, or felt its cleavages in any personal way, or felt any of that affection for the old Lloydean constitution of 1701, such as men like Judge Bryan felt, who had lived through these struggles of the past twenty years. Mr. Wilson's instincts were more for the great questions that his preceptor had raised and his own fresh studies of imperial colonial constitution; and at this time he had formulated the theory that no colonial, constitutional, imperial structure could stand solidly, except a union solely under the Crown—that no British legislature could have authority over another British legislature; hence Parliament could have no legislative authority over the colonies. In other words the Parliament of Pennsylvania was composed of Crown, Governor and Assembly, only. This theory was only held by him privately at this time; it was not yet published, and so he had not yet entered the field of politics. Here he was in Cumberland county, however, as a political potentiality, in the field in which Judge Bryan was so favorably known. And it would be passing strange, if Judge Bryan of Philadelphia should become the leader of the frontier counties on the great Forbes road to Fort Pitt, and the brilliant young Carlisle lawyer and Episcopalian, James Wilson, should become the leader of metropolitan Philadelphia and especially most of its wealth and culture! He was made a lecturer on English Literature in the College of

Philadelphia this very year and gave his courses for the next six years in the intervals of a busy legal and political life, so that he was a colleague of Judge Bryan's pastor, the Rev. Professor John Ewing, at this date. Both Judge Bryan and Lawyer Wilson were also members of the city's most learned and semi-political organization, the American Philosophical Society, but the former came into it from the Proprietary conservative wing, while the latter reached it through the aggressive Anti-Proprietary and radical branch.

While this Carlisle lawyer had arrived in his studies at the conclusion that Parliament had no authority over the colonies, on January 6th, of this same year, 1773, the British Governor Thomas Hutchinson of Boston was trying to convince his Council and the Assembly that such a theory meant colonial independence. "I know of no line," said he, "that can be drawn between the supreme authority of Parliament and the total independence of the colonies: It is impossible that there should be two independent legislatures in one and the same state, for although there may be but one head, the King, yet the two legislative bodies will make two governments as distinct as the Kingdoms of England and Scotland before the union." Then, after reminding them of the protective power, he added: "Is there anything which we have more reason to dread than independence?" To this, on the 27th, their Assembly was replying: "If there be no such line, the consequence is, either that the colonies are vassals of Parliament, or, that they are totally independent. As it cannot be supposed to have been the intention of the parties in the compact, that we should be reduced to a state of vasalage, the conclusion is, that it was their sense, that we were then independent. . . . May we not further conclude, that it was their sense that the colonies were by their charters made distinct states from the mother country?" "If," they continue, "your Excellency expects to have the line of distinction between the supreme authority of Parliament and the total independence of the colonies drawn by us, we would say that it would be a very arduous undertaking, and of very great importance to all the other colonies; and, therefore, could we conceive of such a line, we should

be unwilling to propose it, without their consent in congress."

And an incident in Rhode Island on the following June 6th, of this year, 1773, was to hasten the occasion for such a congress of the colonies. This was the following announcement on that date at Newport: "The public are hereby informed that the Honorable the Commissioners, appointed by a commission under the great seal of Great Britain, for inquiring into the circumstances of attacking, plundering, and burning His Majesty's schooner *Gaspee*, under the command of Lieut. William Duddington, on the 10th of June last [1772], and to the assembling, arming and leading on the persons who made the said attack, and to the concerting and preparing the same, are now convened, and continue to sit every day, Sundays excepted, at the Colony House in Newport: Wherefore," etc. They had had a meeting in January and in May, but with no especial result, but their persistence now made it alarming, that they were actually introducing an alien court that could take away any suspected man to Great Britain for trial. It was not so much any significance in the action on Monday, June 8, 1772, when a sloop dropped anchor at the Newport custom house and then went on up the river, was followed by the British armed schooner, *Gaspee*, ran into a bank, and on the following early morning the *Gaspee* was boarded by unknown men, her officers captured, her Captain wounded and the vessel burned; not so much this, as the fact that an alien criminal court, unknown to colonial constitution, was introduced into a colony. "A court of inquisition," said the *Newport Mercury*, "more horrid than that of Spain and Portugal, is established within this colony, to enquire into the circumstances of destroying the *Gaspee* schooner, and the persons who are the commissioners, of this new fangled court, are vested with most exorbitant and unconstitutional power: they are directed to summon witnesses, apprehend persons not only not impeached, but even suspected!" and Admiral Montague was to take them abroad to be tried!

Even before Rhode Island was awake to the full meaning of this court, on March 12th, the Virginia House of Bur-

gesses formed a permanent Committee of Correspondence and Inquiry, who were instructed, among other things, to investigate the "Court of Inquiry, said to have been held in Rhode Island, with power to transport persons, accused of offenses committed in America, to places beyond the seas, to be tried"; and the Speaker was to propose similar Committees to each Assembly of the whole continent, even Rhode Island. By May and June the other colonies largely responded, and at the next meeting of the Pennsylvania Assembly on September 20th, that body, on the 25th, favored it, but, as it was to cease existence at the election a week later, they recommended it to their successors. This latter body, chosen at the October election, was much the same and they extended the duties of their usual Committee of Correspondence to include this object, on October 16th. With the appointment of these Committees of Correspondence an organ of revolutionary resistance was formed, and the colonial period and its old problems came to a close; and in this upheaval, Judge Bryan, one of the most successful jurists of the metropolis, and a recognized leader of the lovers of the old constitution of 1701 and its supporting statutes, was probably concerned about that great constitution's preservation, and with it the liberties of Pennsylvania, more than any other man.



## CHAPTER VIII

### JUDGE BRYAN AND THE OPENING REVOLUTION

1774

In the opening months of 1774 the whole land was aflame over the attempt of the British government in the past few months to compel the Americans to take the East India tea, by storing it in the various ports in great quantities, and so break down their opposition and collect the tax—a tax to be used, as had already been begun, in paying the executive and judiciary of the colonies to make an independent civil list as Lord Hillsborough had declared was their aim. Philadelphia, during the holidays of 1773–74, had intimidated the captain who tried to land tea there and prevented it more successfully than did Boston and some other places.

These and other incidents made everybody sensitive to every manifestation of ministerial policy. The royalist Governor of Virginia, Lord Dunmore, had tried to get control of the head of the Ohio by erecting a county of Virginia to cover Fort Pitt, where Pennsylvania had already organized Westmoreland county; and on the first day of 1774 announced his purpose to take possession of Fort Pitt and rename it Fort Dunmore, the colonial lines not having been officially marked. A little later Great Britain annexed all the lands west of Pennsylvania, north of the Ohio to the Mississippi, to Quebec, to cut off all claims to that region by the various colonies. At the same time, while Boston was struggling with her Governor and attempting to remove a Chief Justice who accepted salary from the King, and had just learned from Dr. Franklin that that Governor's letters were guiding the home government in her oppressive measures, the public knowledge of this in England caused Franklin to be publicly insulted and removed

from the Postmaster-Generalship of America, and in March they proceeded to close the port of Boston to take effect June 1st. Committees of Correspondence in the various colonies extended their organization to the counties and on May 20th, Philadelphia organized with John Dickinson at its head, and on June 18th formed a committee to aid Boston. Following the action of Virginia, the previous month, they urged a general congress, and an informal meeting of the Assembly to take proper measures. Governor Penn was persuaded to call the Assembly for July 18th, but an Assembly controlled by Lawyer Galloway was not trusted by Lawyer Dickinson's committee, and they sent out a county call for an independent Provincial Conference.

Judge Bryan was not an active public leader at this particular time. He was devoting himself wholly to his duties as a metropolitan judge, since the work of the courts had grown with the growth of the chief city in America. The Assembly, dominated by men who had declared for a Royal Province, that threatened the old constitution of the province, was as inimical to Judge Bryan as he was to it; so they would have no use for him. The Proprietary conceived of him as their colleague, to preserve their interests, for the sake of the constitution of 1701, but only for that instrument's sake; so their interest in him had its limits; besides they were lying low in the presence of the current upheaval, in the hopes that it would pass as the Stamp Act upheaval had passed, and the province would take much the same conservative and skillful course. Besides, the two Assembly leaders, Dr. Franklin and Dr. Galloway, were now beginning to feel a line of cleavage rising between them, as Lawyer Dickinson was rising, as a publicist, to play the same part he did in the Stamp Act upheaval. Franklin, in London, was feeling the reality of the new British policy far more than Galloway, at Philadelphia, with his keenness for a Royal government to take the place of the Proprietary. The new policy, if forced, was to be capable of producing so much greater heat that it was to fuse into evaporation all smaller questions, at least with the great mass of Americans. Not all saw its seriousness, how-

ever; for they could not believe Great Britain could adopt so vicious a policy.

Indeed these colonies on the American shore had unconsciously worked out a political philosophy of their own, in marked divergence from that held in Great Britain. The divergence was as great in political science as in the common law. They had dwelt so long on their struggle to have legislative control of both executive and judiciary, that even where it was not largely already secured, as it had been in so large measure in Pennsylvania ever since 1723, it was still held as the ideal. Indeed they were often charged with aiming at essential republic conditions, and the charge was not so far wrong. Pennsylvania had worked out a constitution, composed of the Lloydean constitution of 1701 and its supporting statutes, strengthened and established by repeated recognition and acceptance by the Crown, so that it had come practically to displace the government section of the original colonial charter to William Penn. And this constitution had in it the vague gropings toward the great principle that sovereignty rests in the individual, a principle far removed from British political ideals. Nor could it be otherwise, when every colonial charter had been a forceful teacher of constitutional law, that had made every one of them schools of political science, ever discussing the principles of specified and implied powers in the governmental sections of their original charters. They went even farther and construed those sections of the original charters so liberally that they created a new thing in its place, so different that the British could not understand it. They had been refused the extension of the benefits of the revolution of 1688 and had built up, little by little, something far greater than those principles. For, while the bulk of Great Britain's population did not control the governmental power of the purse, but still consented to it by others, the colonies, like Pennsylvania, did control the power of the purse and would not endure it otherwise. In short, representation, in Great Britain, was by *consent*, but *not by choice*, the one was acquiescent, the other directive; and even so great a mind as Lord Mansfield could apparently not see the vast differ-

ence. This vast difference, to Judge Bryan, was represented by the old constitution of Pennsylvania of 1701 and its supporting statutes, or, as he would have put it, "our present constitution," in 1774. His mind and heart were centered on that, as their sole political hope, and his ten years as a Judge, engaged in its interpretation and application, only made it more definite and clarified.

Therefore, in the rapid movements of May, June and July, 1774, led by John Dickinson, who now seemed to be identified with Dr. Franklin against the Galloway element, and both against the Proprietary element, with which they associated Judge Bryan and others devoted so singly to the old constitution, the latter was slow to be identified with them. He was not in the city meeting of June 18th, or in the Provincial Conference on July 15th at the beautiful new brick structure of the Carpenters' Company, on Chestnut Street just below Fourth and nearly facing the entrance to the little street on which Dr. Franklin lived. To him it looked as if the Assembly, which was then in session at the State House on that hot summer day, and the Provincial Conference in the second square below it, were rival voices in control of the province and both threatening the old constitution, the one by a Royal government and the other by revolution, and both as followers of Franklin, whom he had long opposed as a dangerous person to the old constitution. He also saw in this Carpenters' Hall Conference a new figure arising, in the person of that brilliant young lawyer protégé of Dickinson's, James Wilson of Carlisle, whom, with Dickinson, this Conference wanted the Assembly to send as delegates to the new Congress now being loudly called for by Massachusetts, Rhode Island and Virginia, for September 1st, which was bound to be even more aggressive than the one of nine years before, in which Judge Bryan figured so largely. He also saw that when they sent Thomas Wharton, Jr., and others of a committee practically to instruct the Assembly,—because this Conference was the latest voice of Pennsylvania,—what to do about this proposed Congress, that Speaker Galloway and his followers would not recognize such a status, nor did they propose to allow Penn-

sylvania to take any such radical action as this Conference seemed intent upon. Speaker Galloway and his friends were going to represent the province themselves, and the Assembly instructed them to stand for rights, but for harmony and union.

Such a course by Speaker Galloway and the Assembly Quakers was calculated at once to bring on an attack on the Assembly by the now thoroughly aroused Provincial Conference. The latter's instruction committee was dominated by Lawyer Dickinson, Provost Smith, Lawyer Joseph Reed and James Wilson, who were all learned men, the last mentioned of whom was the ablest of them all in constitutional theory, and who had a very clearly defined political philosophy, and already had it expressed in manuscript. His conclusion was, unlike that of his preceptor, that the colonial Parliament was composed of the King, Governor and Assembly, precisely as the British Parliament was composed of the King, Lords and Commons, so that the Lords and Commons had *no authority over the colonial parliament, of any kind!* This radical position was too much for Lawyer Dickinson, who merely wanted a return to the conditions before 1763, with a British renunciation of all powers under 35 Henry VIII, Chapter 2—of all powers of internal legislation, internal or external taxation, regulating trade under certain conditions, quartering of troops, or collection of their expenses, powers of Admiralty courts greater than those in Great Britain, 5 George II, Chap. 22, and 23 George II, Chap. 29, the Boston port bill, and all other acts recently aimed at Massachusetts Bay. And for these he was ready to surrender to absolute control of trade that had been bleeding this colony for generations and yield otherwise. And he won—for the time being. He and Mr. Reed and Charles Thomson were ordered to correspond with the other colonies, for they proposed that the new Congress should have power to resist, on these points, to the death. Over-ruled here, Lawyer Wilson at once issued his essay on Parliamentary Authority and placed it in the hands of the new Congress which gathered at the same hall on September 5th.

It was well he did so, for Lawyer Galloway was intent

on a new plan of organic colonial union with Great Britain, just as Wales had once come to a period of necessary reorganization into a principality, and he favored something somewhat like his friend Dr. Franklin's union of 1754. But, the Provincial Conference attack on the Assembly began to bear fruit at the October election and they sent Mr. Dickinson to the Assembly, and the Assembly sent him to the Congress at Carpenters' Hall. Now began the fiercest kind of political fighting, chiefly over whether the laws of nature should be a chief basis for colonial action. Mr. Galloway was against it, and John Adams and others were for it, and the fighting over this and the question of no Parliamentary authority or all was so great, that it was finally decided to confine action to non-importation and non-exportation of the severest kind. The result was that Lawyer Galloway denied the separate existence of the Crown (though he couldn't certainly in the case of Hanover!) which was insisted upon in Mr. Wilson's pamphlet. Mr. Galloway's revival of the Franklin plan, however, did not provide so that the British would not have a negative on colonial matters while the latter could not have over the former, and so his prestige sank, while Mr. Dickinson's old plan prevailed, that had been used to such good effect in 1765. It meant war, to be sure, while, at the same time it was no solution. The Wilson theory, a by-product of this Congress, was the most radical program of solution and it attracted the highest British attention, no less men than Dean Tucker and Lord Mansfield publicly replied to it, but not successfully. It was apparently the first glimpse the British leaders had of the fundamental difference between them and the new Americans leaders.<sup>1</sup> The one sound principle that emerged from this Congress was this by-product of it, that the British legislature could have no authority over the colonists.

Therefore, to a man like Judge Bryan, all these were revolutionary: Mr. Galloway's new colonial constitution, Mr. Dickinson's non-importation and non-exportation to compel recantation of ministerial policy, and Mr. Wilson's

---

<sup>1</sup> See *Life and Writings of James Wilson*, Vol. 1, Chap. VI, by Burton Alva Konkle, for fuller treatment.

denial of all British legislative authority, which also meant war. Two of these three meant war, and it was due to begin with non-importation on December 1st. Now the Quaker and Proprietary elements, led by Mr. Galloway, in the Assembly, united—both against this proposed war. The adherents of the Provincial Conference, in the Assembly, who then began to be called Whigs because the rest were dubbed Tories, now sympathized with the Provincial Conference on January 3rd, at the State House, instead of Carpenters' Hall, which indicated the growth of the Whig idea. The situation was a delicate one for Pennsylvania because the German population had always followed the Quakers, so there was great danger of Proprietary interests, Quakers and Germans combined as Tories, with the Whig following growing stronger day by day and in alliance with the new Continental Congress, and the Presbyterian element was in sympathy with the Whigs and composed them in large part. What is more, events threw Dr. Franklin into their arms, since he was day by day being deserted by the Quakers, whom he had led so long. As a consequence Dr. Franklin had strange bed-fellows—men who had opposed him for years.

The course of the First Continental Congress made necessary a second Provincial Conference on January 23, 1775, for the war was on; but public feeling had so changed in presence of a continuance of British drastic action, that this Conference was held in the State House, instead of Carpenters' Hall. They approved the acts of the New Congress, urged prohibition of slave trade, support of Philadelphia when attacked, resistance by force if necessary, and wide-spread preparation for an independent existence in readiness for any emergency, and adjourned five days later. While this was occurring the Assembly was gradually changing complexion, with Charles Thomson, Dickinson, Morton and Mifflin coming more into dominance. Governor Penn wanted the Assembly not to join Congress, but protest individually, but the new men favored Congressional action. Then in April came Lexington, Concord and the rest, and on May 2nd, Governor Penn sent the Assembly the Com-

mons' resolution offering to forgive and forget if the colonies will pay their share and provide a civil list! Two days later they reply it is too late, and four days later, Dr. Franklin returns and, with Thomas Willing and James Wilson, is sent to the new Congress, while Galloway asks to be excused, a request on which there is no hesitation. Lexington and Concord were ancient *Lusitanias*. The Assembly gave up its east room at the State House on May 10th, to the new Continental Congress, in which James Wilson became prominent, and by June 9th, that Congress had adopted James Wilson's theories so far as to advise Massachusetts to set up a new government on her original charter; and on the 16th Colonel Washington was made Commanding General of Congressional forces. By July 16th, Dr. Franklin revived his proposals of a union as in 1754—an emergency union, not a perpetual one, as Galloway proposed; but he felt sure of its becoming permanent, as neither side would give up. Meanwhile, by June 23rd, Chairman Joseph Reed of the City Committee urged on the Assembly war preparations of a more vigorous character; and on the 30th, Mr. Dickinson was made head of a Committee of Safety, but by the close of September Dr. Franklin superseded him. The Assembly was one on defense of rights, and even more so than before, when at the October election, John Morton, the colleague of Judge Bryan in the Stamp Act Congress, was made Speaker.

The Assembly, however, was in a very peculiar position during the winter of 1775-76, and the fact that they had taken oath of loyalty to Crown and Proprietary, while exercising the British right to resist a Crown that was joining a usurping Ministry, did not make it easier. Then, too, the Congressional advice to Massachusetts, for which James Wilson was largely responsible, namely, that they organize a new government on their old charter, had let loose a very considerable demand for new governments everywhere, as the war proceeded. The British or Royalist colonial action at Fort Pitt, the Connecticut intruders in the north and among the Indians, aroused the back country in Pennsylvania, which had been growing so fast that they were not



adequately represented in the Assembly, and they demand additional representation. These regions were dominated by Scotch-Irish Presbyterians, who had been supporters of Judge Bryan in 1764, in the movement to preserve the old constitution against the Franklin-Quaker royal government proposal. With the Quaker refusal to join in warfare, these and other Presbyterians and other denominations, came to their own, and, as usual, were in no mood to fight battles for a province in which the Quaker section refused to bear a part, without compelling them to bear some kind of share, as petitions to the Assembly at this time abundantly show. The Assembly had forty-one members from eleven counties and five of the back counties—Lancaster, York, Cumberland, Berks, and Northampton—demanded two additional members each, and three—Bedford, Northumberland and Westmoreland—demanded one more member each, a total of thirteen new members, which would materially affect the balance of power in a house of fifty-four members. This was passed on March 14, 1776, and the new members did not take the oath of allegiance to Great Britain.

Let it be recalled that this Assembly was sending to the new Congress the very men that the first Provincial Conference of 1774 had wanted; that, among them, James Wilson had voiced the theory of this resistance, namely, a British colonial resistance to a usurping Crown, Ministry and Parliament, and that this theory prevailed in both Assembly and Congress up to May 15th; that this Assembly was vigorously supporting military action, in hopes of convincing Great Britain of her error; and that their delegates in Congress were so instructed. On May 15, 1776, however, the Congress in the east room, in recess of the Assembly (which met up stairs) awaiting the election of the thirteen additional members, was completing some resolutions of the 10th instant, by adding a preamble, which was designed to remove all British or Proprietary power in every colony—virtually an act of independence. The Assembly, when it met on the 20th, were divided on how to construe this, most of them believing that the recommendations applied only to colonies whose Assemblies were unable to

meet or not fully carry on the fight; not to themselves, who were already vigorously acting. It meant revolution, which was a new thing; it meant up-rooting the old constitution, which had been their boast for three-quarters of a century. They concluded the Congress did not mean Pennsylvania. Mr. Dickinson's ideas were still powerful; and, although the preamble to those Congressional resolutions called for a new government to which all could take oath of allegiance, the resolution, itself, justified Mr. Dickinson and his friends in so construing it, while their own instructions, of November 9, 1775, like those of several other colonies, were absolutely against separation, until it became absolutely necessary. The committee of the City had protested to the Assembly and a public meeting on the same day, composed of members and friends of the Provincial Conference, not only protested against the Assembly's course, but also insisted that, even if the Assembly was willing, it was not elected to make a new government and that a Provincial Convention for that purpose should be elected. At the same time the Proprietary adherents, James Hamilton, chairman, sent in a protest against any change in instructions or in the old constitution of Pennsylvania, although the sentiments against Great Britain were as intense as that of the other protestors, the words "infernal plan of despotism" being used against the Ministry. In other words, Pennsylvania was a unit against Great Britain, but flamingly divided as to separation, now proposed in the Congressional preamble of May 15th. Judge Bryan was with the present Assembly in its attitude of holding to the old constitution, and no separation until it became necessary; but, even more than they, *for the old constitution, separation or no separation.* The Assembly, therefore, as they had no notion of resisting Congressional measures, indeed they so much wished to do the right thing, that on the 22nd of May, they asked Congress to explain whether the Assemblies or Conventions now in control in the various colonies were, or were not the bodies who were to consider holding to the old or creating a new form of government. And on this same day, Judge Bryan applied to the Assembly, now containing so many of his

adherents, to be given the position of Port or Naval Officer of Philadelphia, a provincial office heretofore held by the Governor. It was now time for him and his party to get into the game, and save the old constitution, in the upheaval of independence that seemed now bound to come.<sup>1</sup> The Assembly on June 5th, in line with Congressional recommendations about control of arms and vessels, made Judge Bryan Port Officer for entering and clearing of vessels, taking bonds for observing all regulations of the port and general responsibility for the metropolitan port of Pennsylvania.

Meanwhile petitions and counter-petitions flowed into the Assembly in great numbers; and on May 28th, Cumberland county called for removal of the instructions to Congressional delegates, which prevented them from voting for separation and independence of Great Britain. This was the county in which Congressman James Wilson lived. It was June 14th, however, before they were removed, and this delay caused the flood of petitions, or possibly was caused by them; but both the delay and this action caused a public meeting of the city to direct the "Committee of the City and Liberties" to send the Congressional resolutions to the counties as a call for them to meet on the 18th of June to arrange for the call of a Provincial Convention. This Conference provided that each county should elect eight representatives, with the same number for Philadelphia city and its liberties, the 8th of July was set for the election, and the 15th of July for the meeting of the convention. All of this operation was hastened by the fact that on June 7th, the Virginia delegates in the east room of the State House offered a resolution of independence in Congress, and Mr. Wilson held them off for three weeks in order that Pennsylvania and other provinces might vote in the order they had chosen, and so make a general unanimity of action that would tend to permanence. Then, too, the operations of the British about New York made it evident that Philadelphia was the

---

<sup>1</sup> In passing it may be observed, with some amusement, that just a week later Judge Bryan's old partner in commerce, James Wallace, also applied to the Assembly for the same office.

objective, and Congress called for a "Flying Camp" organization of 10,000, 6000 of which was to come from Pennsylvania; and this imminent danger ripened the independence movement amazingly fast.

But because of the old friendship of Mr. Dickinson of the Assembly and Mr. Wilson of Congress, who were of necessity, or officially, acting in the same line, the Assemblyman from Cumberland county, Robert Whitehill, one of Judge Bryan's supporters, was one of those additional members, who did not take the oath of allegiance, and who, on June 10th, in a letter, intimated a growing enmity against Mr. Wilson, as though he were identified with the Assembly members who were wholly against separation, which was not the case. This straw serves to show which way the wind blew on June 10th, and yet Mr. Wilson was holding Congress back from a precipitate vote for independence three weeks in order that his vote might be backed by the Provincial Conference, not the Assembly, of whose legality there was so very much question.

Now, everything centered on that Provincial Convention, which was to be elected on July 8th, whose decision for independence was already taken for granted, as that is what the Provincial Conference called it for on the 18th of June. Indeed a committee of Congress was appointed on the 11th of June to draft a declaration of independence and have it ready for use when the three weeks agreed upon was up. The whole question in Pennsylvania now, from June 18th to July 8th, was to elect a Convention which was for or not for the old constitution of Pennsylvania, and Port Officer Judge Bryan and his friends in the city and the back country were determined not to lose the essential features of that fundamental law. And a new cleavage was evident. At once those who were against independence were suspicioned as Tories, and many of the most vigorous and able fighters on the old basis, were catalogued as enemies, with those who actually were royalists. The new purpose cut the old political lines to shreds, and closed the colonial period.

## CHAPTER IX

### JUDGE BRYAN AND THE CONSTITUTIONAL CONVENTION OF 1776

JULY, 1776

The moment revolution is assured, anxiety for the new form becomes overwhelming in the minds of all thoughtful men; and, with the instantaneousness of instinct for self-preservation, the individual and collective mind springs to its own theories, as to arms. The burden of proof was with those who would in any way change the old constitution, so the bulk of the people were ready to entrench themselves in that product of nearly a hundred years of struggle to secure, develop and protect it. But of what did this bulk of the people consist, at least so far as activity is concerned? So many of the Quakers were against war and also independence, that their activity was very largely reduced and that meant the activity of the old or eastern counties, and a consequent proportionate increase in the public activity of the new or western counties, in which dwelt so large a share of Scotch and Scotch-Irish Presbyterians. Contributing to this same result was the tendency of the German population, which was so largely of religious principles similar to the Quakers, to follow them, as they had in the past. Contributing almost as strongly to this same result, likewise, was the tendency of so many members of the Church of England, which the Protestant Episcopal Church then was, to sympathize with the British and so become the target of suspicion and actual enmity. The result was therefore an overwhelming Presbyterian leadership, and amongst that leadership, so far as the old constitution and its preservation was concerned, none equalled Judge Bryan in so tremendous

and conservative an influence. And it was of a quiet, unostentatious kind, due to his strong character and his political and legal knowledge. It rose all the higher, because the other best-known leaders, like Dickinson, Franklin, Wilson, Morris and others, were occupied in the work of Congress and the army. Instinctively, the people turned to the advice of the Philadelphia jurist, whose name headed the protests of the Stamp Act Congress to King, Lords and Commons,—the man who had so long stood for the old constitution against Franklin and the Quakers who tried in vain to make it a royal government.

Another curiously overlooked vital fact in this whole matter is that these people looked upon their old constitution as one of essential freedom, not so far different from a republic; which, indeed, the Proprietary governors had often asserted to be their aim. From 1723 to 1763—forty years—they had been so nearly republican, that, with the power of the purse so largely in Assembly hands, they were practically in control of executive and judiciary, and were so seldom bothered with the imperial overlordship that they were hardly conscious of it. The movement for independence therefore, to the untechnical minds of most of them, was merely much like those occasions, when a governor suddenly died or resigned, and the Executive Council, with one of their own number as President of it, became the executive—the whole government in the hands of the people. The chief difference would be that this Executive Council would now be *chosen* by the *people*, for the people, from the people, instead of chosen *by* the Proprietary, for the Proprietary, from the people; while the comparatively unfelt imperial operations would merely be turned over to the new Congress. This also would of course vest all authority technically in the people; but they had long felt that the authority was there essentially and practically anyhow, and they had been trained to consider essential freedom the main thing, also. The change would not be very great and would be chiefly technical. Indeed what was this war all about anyhow, if it wasn't that, since 1763, the British government had aimed to interfere with this essential free-

dom? They had been satisfied before 1763, and would have been now, had it not been for the new Ministerial policy of the last dozen years! This was the sentiment Judge Bryan had voiced and was to voice more than any other man; and whether he would be in the Convention or not he was to be more responsible for the continuation of this old constitution into the new order than anyone else, because he was the leader and organizer of the element who wanted it. For that was the kind of a Constitutional Convention they proposed to elect and they had no notion of any other.

It may be recalled, that the tendency of the old constitution of Pennsylvania was, essentially, to concentrate power in the single chamber Assembly; essentially, not technically, for the technical restraints included, if desirable, the Governor, the Board of Trade, and King in Council, and the Proprietary had ways of securing restraint beyond these. But, when the people of Pennsylvania paid the executive and judiciary, and kept within imperial policy, it amounted to concentration of power in the Assembly—a condition that had been the objective of the people of Pennsylvania almost ever since the beginning in 1682, and especially since the revolution of 1688; and had secured, as an essential actuality since 1723, so far as purely internal affairs were concerned. Now this was based somewhat on the English constitution and it was a favorite idea with many Quakers, as like the government of a Quaker Meeting. Furthermore, advocates of extreme democracy, an unrestrained democracy, have always seen in the concentration of power, in a single chamber legislature, the ideal of freedom; and the Turgot and DeMably schools of thought in France and the followers of Dr. Price in England at this period were giving voice to it as a theory of government more consistent with freedom than any other; and they have had disciples, it may be added, from that day to this in all countries in which democratic movements have any foot-hold at all; and, it may also be added, that in that wing of modern political scientists, which is much influenced by admiration for British principles of political science, or practice, at least, it is the most popular theory today, for the whole tendency in the

British empire is to concentrate power in the House of Commons. Consequently the people of Pennsylvania were aided in their purpose to keep the old constitution by the adherents of this school of thought.

Who then were against it? For one, a once powerful, but now very much crippled element, the extreme followers of the Proprietary. They had never got over the loss of the Legislative Council, or upper chamber, which David Lloyd and his followers had destroyed by the constitution of 1701. They did not have confidence in the common people and had looked upon that body as having the restraining influence of the House of Lords in the British Parliament. Proprietary, Legislative Council and Assembly, in their traditions, corresponded to King, Lords and Commons—a British constitution. These, however, were generally under suspicion as Tories and Royalists, and were somewhat of a negligible quantity, although whenever the ban should lift or they boldly came out for independence, they became a very material support to any more effective opposers of continuing the old constitution.

Who then were the real opponents of a continuation of the old constitution? As a matter of fact, there was no organized opposition at this time. Those June and early July days of 1776 were so tense with war and the question of independence in Congress, where the best-known state leaders were occupied in one of the most critical struggles in American history, that there was no organized opposition. And, indeed, it was only the appearance of the question of a form of government for the proposed Congressional union, that raised the question to any sort of opposition, just at this particular time. Indeed, whatever opposition there was was voiced chiefly in the Congressional east room, where preparations were making for a declaration of independence and union and a form of government. This was far more important of course than any state constitution, to displace a colonial one, could possibly be, and yet this latter question, for wholly different reasons, was so full of explosive, that it was touched only with the greatest care and tact. This explosive quality was not because the



learned element among the Congressmen did not know the principles of political science and government, so well set forth in that classic of the past twenty-five years, Montesquieu's *Spirit of the Laws*, and similar works, which described what the best government should be, in form; it was because the people of each colony were afraid of any real government beyond each state's own government, and they were only taking on provisional Congressional union because it was a necessity; they were lost unless they did. They were as afraid of it as a United States Senator of 1919 was of a League of Nations, let alone a real international government, which was not to be thought of! But, like the Americans of earlier date, the Senate was inclined for a time to accept with reservation even the oligarchial, provisional League of Nations, as a necessity. The learned element in the Congress, as Madison had occasion to say a decade later about John Adams' book advocating a government of the United States with separate single executive, double legislature and independent judiciary—knew that these things were "nothing new to learned men." They knew that every one of the colonies, except Pennsylvania, had that kind of a government, and it was taken for granted, so far as a single state was concerned, and Pennsylvania was looked upon as peculiar in its constitution; while anything else for a national union was looked upon by some of these men as impossible only because of the Great Fear among the people and their less learned leaders. Among these learned men were James Wilson, John Adams, Benjamin Rush and a few others, the first of whom quickly became recognized as the leader of those who were opposed to the old constitution of 1701, on the principles of political science. As he, however, had his hands full in Congress, over the questions of independence and interstate government, he could be no active force at this time in Pennsylvania's campaign for a Constitutional Convention; and it would have done little good if he had been active, so strong was active public sentiment wholly for the old constitution. His sentiments soon became known, however, as to what he would have for both the union and the state and he

thereupon became a marked man among the followers of Judge Bryan, adherents of the old constitution.<sup>1</sup>

Several other elements were calculated to insure the success of the adherents of the old constitution. Indeed it was so taken for granted that the chief idea expressed by the Provincial Conference on June, 19th, was to change "authority" only, from that on a British charter and Proprietary basis to "*the authority of the people only*"—a step that was merely a perfectly logical next step to all those taken since the struggle began in 1682. The "Associators" wholly dominated this conference, and the first test, as to who could vote, provided for them. Others were compelled to take a test oath foreswearing allegiance to the King or opposition to the new independence, and disqualifying all who had fallen under the ban of various revolutionary committees. This, in itself would change the voting strength of the province—or "state," as it was now coming to be thought of—tremendously. Then again each county and the metropolis were to elect eight delegates, on the presumption that, as in the Conferences, vote would be by counties, which gave all counties, either thickly or sparsely populated, an equal vote, thereby giving the back counties a great advantage—all of which contributed to the success of the followers of Judge Bryan. They were to be elected on the 8th of July and meet on the 15th, elect deputies to the Congress, who were to be free to vote for independence, and choose a Council of Safety as executive, this government automatically to displace the Assembly and Governor as soon as chosen. This declaration was done on the 24th of June, at Carpenters' Hall while Congress, in the east room of the State House was working on the declaration and a form of government to be adopted as soon as independence was voted. This was the action Congressman James Wilson had waited for, when he secured delay in action on independence until the people expressed themselves, not only in this but in other colonies, thereby to

---

<sup>1</sup> See *The Life and Writings of James Wilson*, by Burton Alva Konkle, Vol. 1, Chap. viii, for fuller treatment of Congressional action, with which this narrative is less concerned.

secure unanimity. Then came the Congressional final vote that settled the matter on July 4th, when the first draft of the "Declaration" was first signed (the engrossed one not being signed until August 2nd) and a new nation, composed of the people of thirteen states, was created; for the Declaration was one of independence *and union*, so that its last paragraph became the first embryo constitution of the "United States." It was published on the 6th—in the *Pennsylvania Evening Post*, and on the 8th Pennsylvania elected her new Provincial Constitutional Convention, which was to take over the new state government on the 15th instant.

The course of Mr. Wilson in working for unanimity for independence and in expressing himself on the form of government, of both union and state, most desirable as being that well-known to students of political science and government, made public feeling of the adherents of the old constitution of 1701, both "Whigs" and, as the radical wing was called, "furious Whigs," so violent, that, on June 20th, the leading men of Congress felt it necessary to issue a defense and description of his course.<sup>1</sup> This served further to mark him, by the followers of Judge Bryan as one to be watched. It made, also, even before the Pennsylvania Convention met, or was even elected, an irritation against the "learned" and so furnished a campaign slogan against theories of the "educated," as contrasted with the product of the people of Pennsylvania, which had been their boast for seventy-five years. This was given force, too, by the acceptance, here and there, of the popular ideas of Price, De Mably and Turgot, as has been said—a belief in the concentration of power in a single-chamber legislature, unrestrained. Restraint! Why, hadn't that been the one

---

<sup>1</sup> The "Furious Whigs" were those radicals who were much influenced by French theories. They had organized the "Whig Society" quite early in the winter of 1775-6 and by April 1, 1776, when they met at Philosophical Hall, their committee of correspondence was composed of Charles Wilson Peale, the artist, Prof. James Cannon, of the College of Philadelphia, David Rittenhouse, the astronomer, Dr. Thomas Young of Philadelphia and Maj. Thomas Paine, who was to become so famous as a patriot and sceptic, this last mentioned being no doubt the moving spirit in this body. Dr. Young it was who led Vermont to adopt the Pennsylvania Constitution of 1776 as her model, while he was a member of Congress for Pennsylvania. There is no evidence that Judge Bryan was a member of this society.

thing the Assembly of Pennsylvania had been struggling to throw off ever since the founding of the colony nearly a hundred years before! Restraint! Why, the very constitution of 1701 was itself the destruction of a second legislative chamber! And hadn't they fought to prevent the Proprietary executive "Council of State" from assuming the powers of a second chamber for seventy-five years! The whole genius of the constitution of 1701 was against restraint of a second chamber, even if, as it was before 1701, elected by the people! In fact they were a hundred years ahead of Great Britain in the constitutional theory of concentration of power in a single chamber! It was not a mere theory; it was a constitutional condition, gloried in and boasted of as a settled, established fact, for three-quarters of a century! Restraint! Why, it was the Crown, before 1688—the hated Crown; the Crown and its organ the Board of Trade, disallowing their laws, after 1688, also; and the Proprietary obstruction, too; and now, since 1763, the most heartily hated Parliament—these all stood for restraint! And now, if any stood for restraint, what was he but a detestable Tory! Let all the other states have organs of restraint if they choose; it was not the constitutional genius or political tradition of the Quaker commonwealth—even when dominated by Presbyterians, for they concentrated legislative, executive and judicial power in one body, ecclesiastically, just as the Quakers did.

Therefore, when on July 15th, the newly elected Provincial Constitutional Convention met at the west room of the State House, it became the provisional government of Pennsylvania, in place of the Provincial Conference which had assumed a part of government, when, on June 14th, the Assembly adjourned to August, without carrying out certain Congressional measures. While it was organizing, the Congress, across the hall in the east room, was considering, under the leadership of John Dickinson, a confederal constitutional of the same sort, concentrating all power in a single chamber Congress, with the states having equal votes, whatever their size, just as this Convention was supposed to do. Mr. Dickinson, however, was not to succeed so

easily in getting such a constitution in the presence of so many learned men, as the followers of Judge Bryan were in the other room. These latter were so overwhelmingly in control, and were so comparatively unknown men outside of their own counties, that they could choose for President of the Convention the one man of fame among them, the aged Dr. Franklin, and know that he would not dare oppose the old constitution and yet would be compelled to give it the prestige of his great name. David Rittenhouse and Col. George Ross of Lancaster, and Col. James Smith of York were almost the only other men who were known over the state. Such a situation would be strange under ordinary conditions, but these were times when the strength of the state was largely in the army or in Congressional management. There was little to do, however, so far as the constitution was concerned; nothing, indeed, but to transfer the "authority" part of the old constitution to the people alone. They had a *form* already, the one heretofore used on the sudden death or incapacity of a governor, namely, an Executive Council, of which one was chosen President of it, and the Assembly, with the well established judiciary system of 1722. All they needed to do was to provide for the election of that Executive Council by the people and the thing was done.

As this change of government was occasioned by the action of Congress, whose guidance the colonies followed, and the declaration of the right of independence, signed ten days before, was the basis of it, they set a committee of eleven—one from each county—at work on the 18th on a similar "declaration of rights"—1. freedom and independence; 2. freedom of worship; 3. State rights against all outside control; 4. accountability of officers; 5. forming government; 6. right of election; 7. freedom to elect or be elected; 8. right of protection and duty in sharing in providing it; 9. criminal trial by jury; 10. freedom from arbitrary search; 11. civil trial by jury; 12. freedom of speech and press; 13. civil subordination of the military; 14. demand adherence of officers to fundamental principles; 15. emigration; and 16. free assemblage and petition. On

these points there was no disagreement, so on the 24th they appointed the same gentlemen to "draw up an essay for a frame"—an old Pennsylvania name for constitution—"or system of government;" but, the first move toward this part of the convention's work began to show differences, and the influence of James Wilson's friends, like Col. Ross, Col. Thomas Smith of Bedford, Col. James Smith of York, and one or two others; whereupon six new men were added to the committee, after endorsement of the Congressional declaration of independence on July 25th, all of whom—Col. Matlack, Professor James Cannon of the Mathematics chair of the College of Philadelphia, Col. Potter, Astronomer Rittenhouse, Robert Whitehill of Cumberland county (who was to become, if he wasn't already, Judge Bryan's right hand man) and Col. Galbreath of Lancaster—were solid for the old constitution and against the James Wilson followers, a procedure which insured no miscarriage of the plans for preserving the old constitution on a people's basis.

The last three days of July and the first two of August were hot days in more senses than one, for in the west room the fight was to a finish for a government of concentration of power in a single chamber Assembly, while in the east room the Congress was in a fight to a finish over the "one-state one-vote" question, both the most critical questions that were to come up in the two rooms, in the formation of state and nation for the next dozen years—a result, that day, which practically decided that it would take a dozen years to produce the two governments in their final form.<sup>1</sup> The single chamber concentration of power won out in both rooms and the one-state one-vote also, for the present. Judge Bryan's followers, in the west room, and Publicist Dickinson and his followers in the east room won against the influence of James Wilson and his friends, in both rooms. The former won by positive acceptance of the single chamber idea on August 2nd, the day the engrossed copy of the Declaration of Independence and Union was signed, and

---

<sup>1</sup>The authority of the old government and courts having ceased, the Convention, on August 1, 1776, provided for special hearing and release of prisoners in the state jails by appointing special judges for each county, Judge George Bryan being the first one named in the ordinance, for Philadelphia County.

the other won by a negative decision against the Wilson ideas, and a delay, which kept any form of government from being accepted until the war was nearly over, except the embryo union under the Declaration and Congress as organ of it.

Once the single chamber was decided upon, all was decided and the formulation of the principles of the old constitution was a mere matter of detail, either to those conservatives who merely stood for the old constitution or those radical enthusiasts who stood for the extreme democracy of a single chamber concentration of power, such as Professor James Cannon of the chair of Mathematics in the College of Philadelphia, who proved to be the best writer among the active leading members, and is said to have furnished more of the phraseology of the formulation of the old constitutional principles than anyone else. He was a Scotchman, born in Edinburgh, and was thirty-six years old. He had entered the College of Philadelphia in 1764, the year Judge Bryan was chosen to the Assembly and the Stamp Act Congress, and for the past three years he had filled the chair of Mathematics. All he furnished, however, was some of the language, for he seemed to be one of the most extreme radicals, one of whom was reported to have said that "men of education and learning should have no rule, in a democratic system; they always did mischief by introducing checks on the national impulses of the people." And Professor Cannon, himself, in a public meeting attacked "all learning as an artificial restraint on the human understanding": he "had done with it; and advised our sovereign lords, the people, to choose no *lawyers*, or other professional characters, called educated or learned; but to select men uneducated, with unsophisticated understandings." He said he "should be glad to forget the trumpery which occupied so much of his life."<sup>1</sup> So while he supported the Bryan program for different reasons from Judge Bryan, he still supported it, as did other radicals, but only furnished language. For Judge Bryan was no radical in any such sense as this; indeed he was the conservative of conservatives,

---

<sup>1</sup> Brown and Peters' *Biography of the Signers*, Vol. III, p. 276.

and kept an easy hand on his followers. Most of this outbreak against learning and education, however, sprang from opposition to the arguments of men of learning in political and governmental science, who advocated principles of self-restraint with the appropriate organs of self-restraint in government, such as two houses of legislature, separation of executive, legislative and judicial functions, and courts of review, a system of checks and balances, self-imposed. And these latter had been expressed more outside of the Convention room than inside, especially in the press and in the Congress across the hall. The Bryan control of the great majority in the Convention was so complete that there was little question then worth considering, judging from the results. And by control is meant a remarkable confidence in Judge Bryan felt by all who knew him and believed in the old constitution as he did, a confidence that was soon to be publicly shown in one of the most remarkable instances of leadership in the history of any self-governing state. Indeed the character of Judge Bryan's leadership is, in some respects, remarkably like that of the great father of the old constitution, David Lloyd. Both were men of quiet strength, inspiring confidence in their followers to an unusual degree; of fine, high types of Christian character; conservative lovers of the great basis of liberty in constitution and law; especially the great common law; self-educated largely, but soundly educated; both with large understanding of men and institutions; both of great tenacity of purpose; both expert in drawing of legal papers; both somewhat narrow in the line of a general culture; both capable of inspiring great affection; both were capable of riding out the greatest storm, and were unmoved in the midst of it.

It is well, however, to recall, at this point in the Convention, the difference between Judge Bryan and David Lloyd, so far as the constitution of 1701 is concerned, for it bears on the difference between Judge Bryan's and James Wilson's political philosophy. David Lloyd aimed at the British principles of legislative control of executive by the power of the purse and an independent or "good behavior" tenure of the judiciary, whatever the technical claims to



authority by any other source of power. This was essential freedom, but not technical freedom, and he recognized the several elements of restraint—such as actually did exist, in interested advocacy and resistance in Governor, and the Crown and Board of Trade, but he apparently accepted these restraints when they were just. Up to 1776, Judge Bryan had accepted this theory also; but in that year he seems to have seen the disappearance of all authority and restraint above the Assembly, or rather the people, and thought of it as only a barnacle, which had so long been *on* that it had seemed a *part* of the ship of state, and now merely gave the people an unrestrained freedom, which was really their birthright anyhow. He looked at the new condition somewhat as a young man does who, at twenty-one, suddenly feels the snapping of all the ties of authority and restraint and acts freely upon life as it comes. David Lloyd never had occasion to face this problem, and no one knows what attitude he might have had. It was what James Wilson would have thought a naive faith in unrestrained human nature; he looked upon the new condition, also like the young man, freed from *imposed* restraint or rules of guidance from above, but absolutely under the highest of obligations to adopt *self-imposed* principles and organs of restraint for times of trial, *in their place*. Therefore he would have legislative provisions like the judicial provision of a court of review, namely, a second chamber—for he was as unwilling to confide his liberties to the limitations of one legislative body as to one judicial one. Nor was he willing to let the law-maker execute or interpret the law he had made, and apply it, for he would be liable to confuse the two, or possibly three, operations, and so corrupt them. He was unwilling that a law-making body should handle the money it appropriated, when the executive was an equal organ of the people, for it was dangerous, in the same way. In other words, James Wilson stood for what has since come to be American political science, and George Bryan stood for the other great school of political thought, the centralization of power in one body, the theory whose chief representative is



now the British empire, where the House of Commons has centralized all power in itself.<sup>1</sup>

With this introduction to the formulation of the old constitution on the new basis of the people's authority, which was provided for on July 24th, with the additional gentlemen provided on the 25th July, to insure safety, one is prepared to understand what was actually done. The draft was reported out on August 19th to be considered on Wednesday, the 21st. Of course this Convention, as the temporary government of Pennsylvania, could not devote all its time to the new formulation, so that it was not reported out from Committee of the Whole, with orders to Dr. Franklin, Astronomer Rittenhouse and Mr. Vanhorn to smooth off any accidental roughness and print 400 copies, until Thursday, September 5th. For the next ten days, while the new formulation was being prepared, the Convention was engaged in governmental business, but on the 16th, when the new draft was laid before them in print, Col. George Ross of Lancaster and Mr. George Clymer, both followers of Congressman James Wilson, again attempted to secure reconsideration of the principle of centralization of power in a single chamber, but it was promptly silenced by a resolution that this had all been settled once for all on August 1st and 2nd.

For a week they were engaged in government business, but on the 25th of September, the man who, in consultation with Judge Bryan, had been most active in formulation of the new form of the old constitution, Professor Cannon, was also made chairman of a Committee on Preamble and Test Oaths and Affirmations, the results of which were adopted the same day. The next day was spent in prepara-

---

<sup>1</sup> It should be recalled at this point that Chief Justice McKean was as much a follower of Mr. Bryan at this time, and for long afterwards, as he was of James Wilson in 1787 and long afterwards. He was a Delawarean, in the days when Delaware was a quasi-Pennsylvania colony, with the same governor. So that he did not take initiative in either case, although in each case he was a strong, right-hand man of both leaders, in their opposite theories of constitution. If any proof of his following Judge Bryan absolutely were needed, one has to recall that McKean wrote the Delaware constitution of 1776 himself and, as is well known, made its legislature bi-cameral, so that he certainly did not influence Mr. Bryan's followers on that point—the only one of any moment. Delaware had the same constitution as Pennsylvania, from 1701, made under David Lloyd's direction, but the Delawareans were more inclined to the old legislative Council rather than an executive one alone, and so was McKean, as he showed in 1787.

tion for putting the new machinery in operation by election on the 5th of November to meet on the 19th of that month. On the 28th Professor Cannon was made chairman of a Committee on revision of the minutes and the new formulation of the old constitution was published as the fundamental law of the commonwealth.

What are the characteristics of this new formulation? It was called "The Constitution of the Commonwealth of Pennsylvania"—and it was, except in basis of authority, essentially the old constitution of the past seventy-five years—not in language, but in political form and principles. Professor Cannon had, in his Preamble, plainly said it was done "agreeable to the directions of the honorable American Congress," and by the authority of the people of Pennsylvania, vested in this Convention for that purpose, they do "ordain, declare and establish the following *declaration of rights* and *frame of government*, to be the constitution of this commonwealth, and to remain in force therein for ever unaltered," except as it shall need revision.

Passing over the "declaration," which has already been noted, the "Plan or Frame"—for they use the traditional term for constitution in Pennsylvania—is seen to consist of 47 sections, not arranged in Articles. This produced an instrument much larger than the old form, which, if Mr. Penn's political and moral essays were omitted, is very short indeed. This was natural, since the old constitution included both the charter of 1701 and all its supporting laws; so that the new form included both the charter principles and those of the supporting laws, both adapted to the new basis of authority. The language savors a good deal of the schoolmaster and theorist, naturally, and arrangement, by its absence, would seem to have been some of the "trumpery" which Professor Cannon was trying successfully to forget. However, the principles of the old constitution were put in, the part in which Judge Bryan was most interested. The "government" was to be an Assembly and Executive Council, the judiciary evidently being thought of as a part of the executive function, as indeed it always had been. The new circumstances made one new addition, Sec. 5, an

expression of the source of power in the Associators of the past several years, namely, providing for universal military training, even to minors—a curious insertion at this point, but representing the real power of the revolution in Pennsylvania: this was now no Quaker state.

Fourteen sections were given to the Assembly. And one feature stands out plainly not only in these sections but in the whole instrument, namely, rotation in office and fear of one man holding more than one office. The Assembly was to choose the Treasurer of the state and “their other officers,” except such as they choose to leave to executive appointment, like judges, Attorney-General and the like. As in the old constitution they intended to have the power of the purse wholly in the Assembly. Each Assemblyman must take oath or affirmation of his loyal purposes and belief in the “Divine Inspiration” of the Bible. They were to choose the state’s Congressmen annually, “forever afterwards *as long as such representation shall be necessary.*” Important bills were to be published as a kind of submission to the people—also a relic of the early constitutions. Representation was to be “in proportion to taxables,” not population.

But four sections are devoted to the Supreme Executive Council, with the two members of it chosen as President and Vice-President of it, unless the ten or more devoted to the judiciary be included. Here was the great change from the old to the new, for the Executive Council was to be twelve persons, one from each county and one from Philadelphia city, elected by the people, as in Penn’s constitutions before 1701, and one of these was to be selected, in a joint meeting of Council and Assembly as President of the Executive Council, and one as Vice-President, so that the two leaders of the Executive Council were really chosen by the Assembly, the larger body, thus tending to concentrate even executive control in the one body; *i. e.*, the people chose the purely Executive Council, but from these, the Assembly, practically, chose the executive officer of the executive body. For the President and Vice-President were not the executive; they were only the voice of the executive; *i. e.*, the

Council. Their acts were only the acts of the Council, which was the real executive of the acts of Assembly, with no power over those laws, but mere execution of them. As has been said, this gave precisely such an executive as Mr. Penn's Governor and Executive Council, except that now the people chose both Governor and Council and the Assembly, practically, chose the Governor *from* the Council; *i. e.*, decided which ones of the Council should be its President and Vice-President. The Council appointed and commissioned judges, and other legal officers not chosen by the Assembly. They were to be a court of impeachment. It is well to take special note of the nature of this Council and their President and Vice-President, for they are of great moment to this narrative. This was the same old Council of the old constitution, when a Proprietary Governor was incapacitated by death, illness or absence, or during an interregnum, except that it was chosen by the people and its *chief* executive chosen by the Assembly, thus concentrating all legislative and much executive and judicial power in the latter body.

The judiciary, composed of the Supreme Court, the county courts and the Admiralty court, or other courts to be created, were now appointed by the Executive as before, but for fixed terms and good behavior—the Executive itself being now the people's, not the Proprietary executive. The Supreme and Common Pleas courts were to have both common law and equity powers, a peculiarly Pennsylvania institution. In these sections, as well as in many others, much was put in that should only be put in laws rather than constitution. Some were of the nature of items in a Bill of Rights or constitutional limitation, and it seemed very easy for Professor Cannon to drop into essay, political or moral, in writing a section, as, in Section 36: "As every freeman, to preserve his independence (if without a sufficient estate), ought to have some profession, calling, trade or farm, whereby he may honestly subsist, there can be no necessity for nor use in establishing offices of profit, the usual effects of which are dependence and servility, unbecoming freemen, in the possessors and expectants, faction, contention, corruption and disorder among the people: but if any man is

called into public service to the prejudice of his private affairs, he has a right to a reasonable compensation: and whenever an office, through increase of fees, or otherwise becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature." This section seems to say: "Official compensation shall be reasonable," a thing that might be taken for granted and left out of a constitution; yet it expressed some of the vague enthusiasm for ideals of justice that enthusiasts like the Professor Cannon wing of conservators of the old constitution sincerely felt. Judge Bryan could endure much of this provided he got the essentials of the old constitution, and so far as the sentiments were concerned, as sentiments, he was thoroughly in sympathy with them. Section 38 used 37 words to say that the penal laws shall be reformed—another section not pertinent to a constitution. Section 39 said that hard labor penitentiaries "ought to be" provided—not "shall be"—for crimes less than capital, as a sort of object lesson to visitors, who, also, were provided for. In fact these "ought" sections are not uncommon. Some miscellaneous sections provide for naturalization, freedom to hunt and fish, encouragement of public morals, religion and education, even providing Assembly-created public schools to a certain degree—freedom of the press, etc. The Declaration of Rights was declared a part of the constitution.

The most striking new feature, due no doubt to a desire to meet the opinion of those who considered this a wholly unself-restrained constitution that needed some sort of balance wheel, was the 47th, or last, section devoted to amendment of this constitution. This was to be done at seven-year intervals through the instrumentality of an elective body, just twice as large as the Executive Council, to be called "The Council of Censors," the *majority to be a quorum*, in all cases except the calling of a constitutional convention, and this body was to exist one year. They were to be a general investigating committee, with power to order impeachment, recommend repeal of laws, pass public censures, to call a convention to amend details, which details are to be published for general consideration. There is every

probability that Judge Bryan was responsible for this feature, for a mere majority of this body of twenty-four members could hold the old constitution against all aggression. It was the new feature, *par excellence*, and was designed chiefly as an insurance on the life of the old Pennsylvania constitution. Amendment to the old constitution must come through the Council of Censors alone, and a majority could control it. This is evidence of the able and bitter opposition that Judge Bryan and his party saw brewing in the learned young lawyer from Carlisle, James Wilson of the Congressional Board of War, and his friends in both state and union; and it is safe to say that it was to prove the most remarkable and sensational constitutional conflict in any state in American history, and was destined to become a national affair—a national affair of the greatest moment as a lesson to our own time in international affairs. Indeed it was destined to have not only a great influence on the attempt then making to secure a real national government but was itself to be seriously affected by that attempt. The Council of Censors' provision of the 47th Section, was the citadel of the old Lloydean constitution of 1701 in its new form, and about it was to rage a battle even to blood-shed, and for many a year.

## CHAPTER X

### VICE-PRESIDENT GEORGE BRYAN OF PENNSYLVANIA

1776

No one can understand the career of Judge Bryan as a leader who fails to grasp one particular feature of his character, which he had in common with his great predecessor, David Lloyd. It was a moral force of character of great tenacity of purpose; and a detachment or poise of mind that seemed to ignore non-essential persons and events with an easy confidence in the main purpose on which his mind was set. He inspired a like confidence in his followers, somewhat as Lloyd did also, and, in like manner absorbed easily a complete guidance and dominance—a phenomenon well illustrated, in some ways, in the career of a great chief executive of our own day. He had been exercising this quality for many years, in a quiet unostentatious way, while he was a merchant, a public officer, a jurist and Port Naval Officer, and now it was to be done officially and in the lime-light.

Three weeks before the new constitution was proclaimed, the Constitutional Convention, on September 3rd, reorganized the local judiciary by new appointments: this was done to insure a judiciary in sympathy with the revolution and to give members of the Council and Committees of Safety powers of a Justice of the Peace. For Philadelphia city and county, the list of appointments for the courts was headed by "Benjamin Franklin, John Dickinson, George Bryan," which shows the standing of Judge Bryan in the new state government and Constitutional Convention, bracketted as he was with the two most famous men in Pennsylvania, if not in the whole American union, the one President of the Convention itself and the other a leading Congressman. The Convention had seen to it, also, that their majority kept a



vigorous dozen members in the old Assembly to keep it under their eye, and on July 24th reorganized the Council of Safety, making their own active men like Astronomer Rittenhouse, Professor Cannon and Colonel Matlack dominant there, re-organizing it still more on August 7th, making Thomas Wharton, Jr., President of it and Mr. Rittenhouse, Vice-President, where before they had had mere temporary chairmen. This body was really the commonwealth military executive, the strong arm of the Convention.

With the promulgation of the revised Constitution on September 28th, without submission of it to the people for ratification, the month of October was a month of as much uproar as the alarming necessities of the war would allow.<sup>1</sup> By the 21st and 22nd of that month a mass-meeting was held at the State House in two sessions, with Colonel John Bayard as chairman. Among other things they protested that the Convention exceeded its powers; "That the said Constitution *unnecessarily* deviates from all resemblance to the former government of this state, to which people have been accustomed;" that "the people did not desire such *strange innovations*, but only that the Kingly, parliamentary and proprietary powers should be totally abolished, and such alterations made as would thereby be rendered necessary, so that a well-formed government might be established solely on the authority of the people;" that it differed "*in many important articles* from EVERY government that has lately been established in America on the authority of the people—from the sentiments of the Honorable the Continental Congress respecting government—and from those of the most distinguished authors, who have deliberately considered that subject." At this point they add an elaborate foot-note, so illuminating, that it should be read with the text: They say it differs in that, "1st, it establishes only a *single* legislative body; 2ndly, it renders the *judicial* department dependent on that *single* legislative body, who may remove any judge from his office *without trial*, for anything they may

---

<sup>1</sup> In a sense the State of Pennsylvania had no government from September 28th until the election on November 5th and no regular government until March 5, 1777, a period of over five months. Of course the Council of Safety was the military government.

please to call misbehavior ; 3rdly, it renders the *executive* dependent on that *single* legislative body, by whom alone the *executive* officers are to be paid for their services, and by whom, from the great disproportion between the numbers of the Assembly and Council, the President and Vice-President must always be annually chosen,—besides, that every officer, *executive* or *judicial*, may be impeached *by the Assembly*, before *six* of the Council *thus dependent on the Assembly*, and be tried and condemned. 4thly, it erects no *Court of Appeals*, more necessary here than in some other states, as our Supreme Court may try causes in the first instance, and finally determine them, so that there is no mode settled for correcting their errors.”

The foot-note continues: It “differs from the sentiments of the Honorable Congress in rendering *every judge* in the state entirely dependent on the *single* legislative body. For in the first petition” one of the grievances was “The judges of Courts of Common law have been made entirely dependent on *one* part of the legislature for their salaries, as well as the duration of their commissions;” and the Congress had said that power should be “separated and distributed” into “different hands, for checks upon one another,” in their address to Canada. Indeed it could be said, they say, that the executive, judicial and legislative powers are “united in one body.” They then quote Montesquieu and Addison on this point.

Returning to their other objections: the sins of omission and commission in the new instrument are numerous; it is confused, inconsistent and dangerous; that it ought to be at once altered and amended; that it provided no free mode of amendment, as the Censorship is designed to keep it; that the people were given no time for consideration or ratification, and so the Convention did not know whether it would be satisfactory to the people; that the Convention have fastened it on the people against their will for seven years; that their test oaths are unprecedented violation of liberty on the American continent; that the people are dissatisfied with it generally; that it is responsible for the recent great numbers and insolence of the disaffected Tories;

that it must be changed at once; and they propose that electors refuse to take the oath on November 5th; that judges, and Assemblymen ought to do likewise; that the Assembly ought to make the necessary changes; in other words be itself a new Constitutional Convention; that they shall submit the result to the people; and finally that no Councillors at all should be chosen on November 5th.

This was very much like a counter-revolution, and so far as Philadelphia city and county was concerned no Councillors were chosen at all and no prescribed oaths taken. The new Assembly gathered at its rooms on the 28th, however, but without a quorum until the 29th, November, and the old Council of Safety with Thomas Wharton, Jr., as President and Mr. Rittenhouse as Vice-President was practically made the executive. On November 11th, this Council were informed of the advance of General Howe toward Philadelphia and the Flying Camp took many from these various civil positions for the time being. By December 12th, the Congress became so alarmed that they notified the Council of Safety that they proposed removing to Baltimore, to meet there on the 20th, and the new Assembly was without a quorum for the same reason from December 14, 1776, until January 13, 1777.<sup>1</sup> This made some new elections necessary and on the 14th of February, Thomas Wharton, Jr., was chosen a Councillor for the county, and four new Assembly members chosen, and the city had its election on the 21st, when Judge Bryan was chosen its mem-

---

<sup>1</sup>Judge Bryan's eldest son, Samuel, a boy of sixteen, writes his father a letter about this time, January 26, 1777, from near Williamsburg, Va., where he was, apparently on an errand of a business nature that indicates some of the ability he was to show later. "They have laid a very heavy tax in Virginia" he writes, "on all estates real and personal, bonds, loan office [certificates?] &c. it being one per cent. on every hundred pounds a man is worth. They have also passed an act to draught five thousand unmarried men out of Virginia to join the army by March next, besides 5000 Volunteers. Great quantities of salt arriving continually; 15 vessells having arrived 3 or 4 days ago with that and other articles at South Key. A gentleman just from Williamsburg says that 15 Bermudians are arrived at South Key. There are 7 on the eastern shore all loaded with salt. I am in hopes necessary articles will be brought down to a reasonable price.

"The road[s] in Virginia are very level and sandy, but excessively blind to a stranger, the great roads being but 30 feet broad, which is the breadth of all the bye roads, and no house to enquire at for sometimes six miles together; however, I have pushed through at last. . . .

Your Dutiful and  
Affectionate Son,  
Saml Bryan"

—George Bryan Papers, Historical Society of Pennsylvania, Philadelphia.

ber of the Executive Council.<sup>1</sup> Ten days later, on March 4th, six of the twelve members of the new Executive Council, Judge Bryan not present, met in the Council room on the second-floor west room, the Assembly then having the east second-floor room, over the Congress below, and they notified the Assembly of their readiness to join them in the Assembly room to elect the Council's President and Vice-President, which they proceeded to do that morning. The six Councillors were merged into the forty-six Assemblymen and a test vote the previous day showed twenty-nine to seventeen—on what appeared to be a party vote, that the twenty-nine were able to run executive, legislature and judiciary as they pleased. They promptly chose the two Philadelphia Councillors to the chief and vice-chief executive offices, President Thomas Wharton, Jr., of the Council of Safety as President of the Executive Council and Port Officer, Judge George Bryan, the city Councillor, as Vice-President; and it was ordered that at noon of the following day they should be proclaimed at the Court House balcony at Second and Market Streets.

Therefore, on Wednesday noon, March 5, 1777, a procession formed at the State House headed by constables with their staves, sub-sheriffs following; then the High Sheriff and Coroner, the Sergeant-at-Arms of the Assembly, followed by the Speaker and Clerk, Assemblymen, President Wharton and Vice-President Bryan, other members of the Supreme Executive Council, and members of the Council of Safety and Navy Board. On reaching the balcony, the sheriff commanded silence, whereupon President Wharton and Speaker John Jacobs of Chester came forward, while the clerk read the election proclamation, and President Wharton announced the ceremony closed amidst the acclamations of the people and the thunders of thirteen brass field pieces captured from the Hessians at Trenton. The returning procession was the same except that President Wharton, Vice-President Bryan and the other mem-

---

<sup>1</sup> On the same day the county judges were elected according to the constitution and Judge Bryan and Benjamin Paschall were chosen from the Dock Ward.

bers of the Supreme Executive Council preceded the Speaker and Assembly.

They did not return directly to the State House, but proceeded down Second Street to just above Walnut Street, at the southwest corner of what is now Moravian and Second Streets, to the City Tavern, the chief commercial and general social hostelry of that day and for long after—a building on the site of the Philadelphia home of David Lloyd and just across the street from the old "Slate-Roofed House," once the executive mansion of William Penn. The Assembly were hosts to the dinner which followed and members of Congress then in the city and United States army officers were special guests. As dinner closed, toasts were drunk amidst the distant sounds of cannon and the ringing of the bells of the city. Some of the subjects were: 1. The United States of America; 2. The Congress; 3. The Commonwealth of Pennsylvania; 4. General Washington and the Army of the United States; 5. The Navy of the United States; 6. The Friends of Liberty in all Parts of the World; 7. Perpetual Union and Strict Friendship Among the States of America; 8. The Arts and Sciences; 9. Agriculture; 10. Trade and Navigation; 11. The Memory of the Brave Patriots, of All Ranks, who have Gloriously Fallen in Their Country's Cause; 12. May Every American Know His True Interest; 13. May Justice, Firmness, and Humanity ever characterize Americans; 14. May Human Knowledge, Virtue and Happiness receive their last Perfection in America; 15. May Every Private Consideration Give Way to the Means of our Public Defense; 16. General Lee and all our Friends in Captivity; and finally, 17, Dr. Franklin (who was now seventy years old). With this event the revolution in Pennsylvania was considered established, for notwithstanding dark days, there was every confidence as to the outcome of the struggle, of which the reverberation of the captured Hessian cannon seemed an omen.

President Wharton belonged to a very prominent family of Philadelphia. His brother, John, was on the Navy Board of Pennsylvania. His uncle, Joseph, known as "Duke

Wharton," because of his noble bearing, was a prominent merchant, as he was himself. His cousin, Samuel, was also a big importer and one of the owners of the colony of Indiana, which was almost established in what is now West Virginia, when the war opened. President Wharton, himself, was a leader in the Stamp Act non-importation, on the Committee of Correspondence in 1774, one of the Committee of Safety of 1775, and President of the Council of Safety in 1776. He therefore naturally became the first head of the executive of the state, but it was for his executive prowess alone. Vice-President Bryan was chosen for other reasons. He was a legal leader for the Council, he was the leader of the great body that clung to the old constitution and had attempted to formulate it in the constitution of 1776. This constitution, said Alexander Graydon, a somewhat cynical critic of the Vice-President, in his *Memoirs*, "was understood to have been principally the work of Mr. George Bryan, in conjunction with a Mr. Cannon, a schoolmaster, and it was severely reprobated by those who thought checks and balances necessary to a legitimate distribution of the powers of government. Doctor Franklin was also implicated in its production; and either his participation in it, or approbation of it, was roundly asserted by its fautors. The Doctor, perhaps a skeptic in relation to forms of government, and ever cautious of committing himself, had thrown out an equivoque about a wagon, with horses, drawing in opposite directions. . . . But whether he meant by his rustic allusion, to show his approbation of checks or otherwise, is an enigma that has never been solved; nor is it worth the trouble of solution."<sup>1</sup> "With respect to Mr. Bryan," this cynical, but interesting critic continues, "so conspicuous at this era in the home [Pennsylvania] department, he was one of those, whose memory treasures up small things, with even more care than great ones. He was said to be a very diligent reader, and was certainly a never weary talker, who, in the discourses he held, seldom failed to give evidence of an acquaintance with the most minute, recondite, and out-of-the-way facts; inso-

---

<sup>1</sup> *Memoirs Of His Own Time, etc.*, 2nd Ed., p. 285.

much, that a bet was once offered, that he could name the town-cryer of Bergen-op-Zoom. As Ireland had given him birth, he was probably like the bulk of his emigrating countrymen, in the antipodes at all points, to whatever was English; and a staunch patriot, of course. It was, moreover, his passion or policy, to identify himself with the *people*, in opposition to those, who were termed the *well-born*, a designation conceived in the genuine spirit of democracy, and which it may be supposed, did yeoman's service to his cause. . . . In other respects Mr. Bryan was well enough; let us say, a well-meaning man, and even one, who, in the main, felt he was acting the patriot: for this part, it is well known, is played in very different styles." All of which was very mild expression indeed compared with what was yet to come.

Vice-President Bryan was now undoubtedly the most powerful force in the government of Pennsylvania, potentially. He now represented two elements: those who believed in the old constitution of the province, now in the new form of the republic, and those, affected by French thought, as well as a large element of British thought, which believed in concentration of power in the one house. These two were, in substance, one; for a single house that controls the purse and has the executive and judiciary dependent on it for salary, is essentially, though not technically, little different from the single chamber that has technical control of both executive and judiciary. It will thus be seen that they were really not far apart and that the new Vice-President was their leader, organizer, legal counsel and voice, still in an unostentatious manner, even if, as now, the second official in the new state. It was this technical difference in favor of the old constitution on which the Bayard Mass-Meeting pitched as claiming departure from the old in the new form of 1776. They expected a separate executive, the Assembly to have no part in its choice, as an element of self-restraint; and they also expected the Council to have legislative powers, as another element of self-restraint, as it did here in ante-1701 days and William Penn intended it to have after 1701, and as it actually did have whenever the

Council had influence enough over the Governor, or the Assembly was weak enough or enough in sympathy to stand by and endure it, which was not so often. So they were able to cry "old constitution" at Vice-President Bryan and his party—or parties, with some show of technical accuracy; but it did them no good, for the dominant element was that which had long secured *essential* concentration of power in the Assembly and they now had it *technically*, and, by means of the septennial Board of Censors, and test-oaths which would sift out opposition, intended to keep it so. In short the Bayard Mass-Meeting took the present British position, namely, to have executive and two houses, *technically*, but to have all power concentrated in one house, *essentially*; While Vice-President Bryan had passed from that position, which he had held for nearly a quarter of a century of citizenship, to *technical*, as well as *essential*, concentration of power in the Assembly, and this happened to be coincident with the theories held by many in France and England then and ever since, until it has today many adherents in all lands and practically characterizes a most important school of political science. Vice-President Bryan and that powerful young member of the Congressional Board of War, Lawyer James Wilson, and the Bayard Mass-Meeting at the State House represented permanent theories, and nowhere in history have the three theories fought a greater struggle than that now entered upon in Pennsylvania on the advent of Judge Bryan as Vice-President of its Supreme Executive Council.

As if to symbolize this centralized system in the Assembly, that body's Speaker, on March 4th, had administered the oath of office to President Wharton, and on the following day the latter did likewise to Vice-President Bryan, and he to the rest of the Executive Council. It became evident very soon that in this organization, there was one marked division of labor in that upper west room Council Chamber, which was a species of "Executive Mansion;" and that was that President Wharton, as he had been before, as head of the Council of Safety, was chiefly occupied with the military and naval sides of the state govern-





THE SUPREME EXECUTIVE COUNCIL ROOM  
where Vice-President Bryan served  
Independence Hall, Second Floor, S. W. Corner



ment and Vice-President Bryan gave attention to the re-organization of the civil and political sides of it.<sup>1</sup> There is no evidence that President Wharton was concerned with the latter side at all; so he aroused no enmities, while to his jurist colleague was ascribed all political and civil blame. And the Vice-President had his hands full, too; so that it was not strange that he was absent on the 11th, 12th and 13th of March, especially when one knows that the Anti-Constitutionalists, under the leadership of Congressman James Wilson, on these very days, were taking vigorous measures to get a new convention before the new government got on its feet. On the 13th, Mr. Wilson wrote his friends Atlee and Yeates of Lancaster: "The Assembly taking advantage of the weight and influence, which those in the opposition to this plan of government bestowed upon them for the purpose of defending the state, and repelling the common enemy, are now proceeding, in absence of that weight and influence, to establish their power under the constitution. It is therefore high time that those who think the constitution a bad one should rouse themselves. From many accounts I am led to believe that the dissatisfaction with the Assembly and their measures is very great and general; and that a successful opposition wants only a beginning. The enclosed declaration will show you what steps we are taking here. It is already signed by the most respectable inhabitants of this place [Philadelphia]. I could wish that similar measures were adopted in other places."<sup>2</sup> The previous day's issue of the *Pennsylvania Journal* contained an article by "Phocion" who lifted the veil over the proceedings since the November election: He said that out of an electorate of 50,000 or 60,000 in the state not more than 2500 voted, so that only about half of the 72 members of Assembly were chosen, and only about half of them were able to take the oath; that in January an act was passed without publication for public consideration beforehand, a

---

<sup>1</sup> It is interesting to note that two volumes, Burn's *Justice* and Blackstone's *Commentaries* were ordered, on March 10th for the use of the Council, and that would undoubtedly be done at Judge Bryan's suggestion, as he was the legal adviser of the Council.

<sup>2</sup> *Life and Writings of James Wilson*, by Burton Alva Konkle, Vol. II.

violation of this announced great organ of safety. He asserts that the February election in Philadelphia, when Mr. Wharton was chosen Councillor, only 29 votes were cast and at the later one when Judge Bryan was chosen Councillor only 41! Therefore, he says, many withdrew from the Assembly. He does not say, however, how much this was due to absence on military duty. Vice-President Bryan therefore had his hands full, indeed, to pull successful re-organization out of these conditions.

One of his friends, under the pen-name of "Demophilus," on March 19th, in the *Gazette*, paid his respects to "Phocion" in kind: "Whether you are that Proprietarian retainer—that compromising farmer [Dickinson]—that procrastinating delegates, whose chilling breath backened[?] all the measures of Congress [James Wilson], whether you are that *piddling politician*—that *summer soldier* that once looked over the Sound to Staten Island on purpose to regain your lost popularity,—and in time of danger, resigned all your public trusts, and fled to another state—or whether you are that detested *Jackall*, whose whole life has been spent in hunting prey for foreign and domestic lions, imports but little in the present question. One thing is clear as sunshine, that you are a pernicious, disappointed and disaffected *incendiary*, whose revenge for the neglect your own demerits have subjected you to, would rekindle a flame which a Mifflin only could have damped and prevented from overwhelming the state in ruin. ——— Your infernal ambition to be *at the head of everything* rendered you irreconcilable to a change of that rotten system which would admit of one man's bearing as many commissions as he could wag under—and your resentment, sharpened by the disappointment of not having the opportunity of framing the constitution of this country with the dregs of your old Proprietarian Assembly, put you upon the search of measures to over-set that bulwark, which your *old opponent*, in conjunction with many other wise and honest men, had raised against your aristocratical machinations." In fact "Demophilus" dares "Phocion" to put out a real pamphlet criticism of the constitution and he will put out one showing only the contents

of that instrument; then if a majority vote for a new convention can be secured he will himself be convinced and converted to it for good.

Another writer, "Philadelphia," says: "The wisdom of Pennsylvania collected in the late Convention concluded justly that the power of government really resided in the body of the people, and considering we have no hereditary King or Lords, whose prerogatives entitle them to negatives in their own right, a negative, or power of controlling the *united will* of the *whole community*, is not only absurd and ridiculous, but *highly dangerous*. Consistent with their trust, the Convention could not have established such a power, without special instructions for that purpose, neither had they a precedent for it in our former constitution." He suggests that Holland's example be followed, who has a great lawyer "Pensionary" who revises every law before it is passed, and suggests the new Chief Justice Thomas McKean as the man to be called by the Assembly for that purpose.

The Whig Society, recently organized, with the artist, Charles Wilson Peale, as chairman, issued a plea also for moderation in opponents of the constitution during the present turbulent times. On May 6th over forty of James Wilson's followers—Dr. Rush, the Cadwaladers, Ross, the Clymers, the Bradfords, Nixon, Thomson, Morris and others appealed to President Wharton and the Board of War for a Convention, and the latter, headed by Richard Bache agreed to join them in appeal to the Assembly. To this a counter-appeal was made by the Whig Society, Charles Wilson Peale, chairman, to the general effect that it was now a period of invasion and it would weaken powers of resistance to turn from war to constitutions. Many others on both sides expressed themselves vigorously, until it was evident the movement for a new convention was gathering great momentum.

On the 13th the Council had appointed a State Board of War, with Rittenhouse at the head, and a Navy Board; but on the 14th, when Vice-President Bryan presided, in the President's absence, the latter Board declined to take

the test oath. Judge Bryan presided on the 17th also, and on the 18th, when both were present, they asked the Assembly to settle the compensation of members of the Supreme Court before appointments were made. This was in view of offering it to Col. Joseph Reed, then with the army. On the 21st and 22nd, when both were present, wholesale appointments over the state were made, after which Vice-President Bryan was absent five days. This absence may have been due in part to his duties as Naval officer of the port, for it was April 4th before his successor was appointed. On April 5th, while he was absent, the state Congressmen had a conference with the Council on the movements of General Howe, whose objective was undoubtedly the capture of Philadelphia. They came again on the 10th to arrange for defense, when Vice-President Bryan was absent, doubtless because these were military sessions, in which President Wharton would be the authority. Indeed he was absent the rest of May and the first five days in June, and was no doubt engaged in the legal business side of the government; indeed, on the 6th of June he was second in a list of about a dozen men who were given general Justice of the Peace powers. Thereafter he was almost invariably present.

On the 11th of June, the Assembly, headed by Speaker John Bayard, sought a conference with the Supreme Executive Council on the flood of petitions for a new Constitutional Convention precipitated by Congressman James Wilson's propaganda. The Council advised that if the Assembly thought it their duty to take measures to find the wishes of the people, it should be done in a conciliatory spirit. A week later, on June 17th, the Assembly issued a proclamation, amid all the excitement and noises of the wagons and drums of the militia getting ready to be called when General Howe's army got around Cape May and showed whether he was to enter the Chesapeake or the Delaware,—issued a proclamation that each election district, at the next election, was to choose a Commissioner, who should personally visit all voters in his district and take his sentiments for or against a call for a new conven-

tion and the results were to be reported to the state government. On the same day the Assembly replied to the proposals of the Assembly of Virginia for measures to jointly settle the western boundary line of Pennsylvania westward of the Mason and Dixon line. In this they proposed a joint commission or a settlement of it through the channel of the Congress. As this concerns Vice-President Bryan intimately it may be further considered at the proper place. Two days later, on June 19th, the Assembly, in the room across the hall, adjourned to September 3rd.

By the next day the concentration of militia activity in State House square was so great and accompanied by such confusion of noises, that the Council ordered a rendezvous elsewhere. These were days of tense emergency effort, but not so much but that the Council provided in advance for failure in elections on July 5th. All of July was spent largely in organizing for possible evacuation of the city, when the course of General Howe and the outcome of it could be determined. Wholesale appointment of officers to organize removal of live-stock to the country was ordered; and when, on the 27th, the enemy fleet was reported off Egg Harbor, New Jersey, a new militia call was issued. Efforts to organize the Supreme Court had not succeeded heretofore, for Col. Joseph Reed felt compelled to decline the Chief Justiceship after much delay, and on July 28th Col. Thomas McKean was appointed, with Jonathan Dickinson Sergeant, Attorney-General. By August 1st public papers were ordered removed to various places in the back country, and mention of express riders from south New Jersey, Maryland and Delaware are frequent. By the 12th ex-Governor John Penn and Chief Justice Benjamin Chew were ordered as prisoners to Virginia, at the request of Congress, but in a few days Dr. John Ewing told the Council that the Attorney-General was ready to sign a parole merely as an ex-officer of the old government, as that was his only "offense." Many others were on parole besides, ex-Governor James Hamilton being one of them. By the 16th of August the appointment of Judges Wm. Augustus Atlee and John Evans as "second and third

judges" of the Supreme Court completed the organization of that body, and the oath was ordered administered on the 19th. The state organization began to take shape under Vice-President Bryan's skillful management, but the order on the 27th to take all the lead spouting of the city down, the disarming of all the disaffected, and on the 29th the actual movement of all cattle from southeastern Pennsylvania was the result of General Howe's fleet in the Chesapeake. On the 31st of August Messrs. Rittenhouse, Bradford, Delaney and Capt. Peale were appointed to make out a list of dangerous persons to have at large and Vice-President Bryan signed the order for their arrest, while late in the day news of Howe's army landing at the head of the Chesapeake in Maryland arrived. The imprisonments under the Vice-President's direction were numerous in early September, Provost Smith of the College of Philadelphia being one of them. As all of these were made on Congressional recommendation, on inquiry by Vice-President Bryan, it was stated that they might be released on swearing allegiance. These prisoners were placed in the Masonic Lodge and by September 9th were ordered taken to Staunton, Virginia.

Vice-President Bryan was doing so increasing a share of the work that, although on September 5th, he was paid £250 for the six months' work, on October 12th his salary was made equal to that of President Wharton, £1000, to date from his election. On September 10th proclamation of the approach of the enemy was made and the next day all shops and stores were closed and every able-bodied man was ordered into militia duty. On the 14th all the bridges on the Schuylkill were ordered taken around into the Delaware and on the 23rd the Council held their last meeting in Philadelphia, after which on the 26th, General Howe's entry took place and the old Council and Assembly rooms were in the hands of the enemy.

Meanwhile the Assembly had been trying to get a quorum ever since the 3rd instant and only succeeded on the 13th, whereupon, on the following day they vented their wrath on Congressmen Wilson and Clymer by an



order for superseding them, and on the 16th voted to withdraw the plans for electing Convention Commissioners—or, as they put it, postponed further action on a new convention on account of the present emergency. On the 18th, they adjourned to meet at Lancaster on the 25th, the enemy entering the next day.

The last week in September, 1777, with the surrender of the American capital, Philadelphia, was a dark time to all, as well as to Vice-President Bryan of Pennsylvania. Both the state and Congressional governments must seek a new home, temporarily, and both made hasty choice of a small city in the back country, Lancaster.

In all the gloom of this dark year of 1777, however, there was one bright ray and that was one furnished by Vice-President Bryan, himself. Slavery had always existed in Pennsylvania, as in other colonies, although there had always been movements against it, especially among the Quakers. But as the spirit of liberty began to flame higher after the Declaration of Independence, it began to appear to some high souls, and Vice-President Bryan among them, that slavery of a race was inconsistent with the terms of that declaration.<sup>1</sup> Thereupon, some time during this year 1777, the exact date of which is not known, Vice-President

---

<sup>1</sup> In her constitutional convention in 1776 Pennsylvania had said all men were "free and equal," and some wanted it to include negroes, by inference, but wanted in vain. Judge Bryan persisted, however, and in 1777 had recommended a definite law freeing slaves. The Assembly, sensitive about originating law, ignored it. This year, on June 4th, Vermont (as it came to be called) declared her independence of the states on either side of her, and by July 8th had formed a constitution, in which they expressed the inference, from the "free and equal" clause, that slaves "ought not" to be held, as the first article of the declaration of rights. This constitution was almost a copy of the Pennsylvania one, copied on the recommendation of Dr. Thomas Young of Philadelphia. Like that, it was not submitted to the people, and was not put into effect by election until March 12, 1778; nor was its independence recognized by the States of New York and New Hampshire. Furthermore the Assembly, itself, felt it necessary to "affirm" the constitution in 1779 and again in 1782, and a new constitution was made in 1786; and even then the status of the New York-New Hampshire contest was such that the state was not admitted by Congress until 1791. Still further, a case was had in the Supreme Court of Vermont at the August term, 1802, in which one attorney said "That the position 'that slavery cannot exist in this state,' must be taken *cum grano salis*," and the case was to test the existence of slavery in Vermont. It is true the decision held that, under the same article, in the then present Constitution of 1793 (those of 1786 and 1777 being the same), it had no legal existence. This gave the phrase "ought not" the force of "shall not," of course. Vermont had so few slaves that it was no serious matter, and she avowedly followed Pennsylvania; consequently she followed Judge Bryan, anyhow, so that his position as leader in this great question of legal emancipation is unassailable. The Vermont action is best treated in an address before the Vermont Bar Association in January, 1921, by Chief Justice John Henry Watson, to whose researches the present writer, who suggested them, is greatly indebted.

Bryan persuaded the Supreme Executive Council to propose to the Assembly the desirability of a law for the gradual emancipation of slaves. The Assembly at that time did not see its way clear, however, to take the matter up, it being a very serious subject and the legislative body was very sensitive about originating all legislation. This was very much in the heart of Vice-President Bryan, however, and this was only, as it proved, the first step in providing the first unquestioned legal emancipation of the colored race on the American continent.

## CHAPTER XI

### VICE-PRESIDENT GEORGE BRYAN OF PENNSYLVANIA SECOND TERM. LANCASTER

1777

While General Howe is establishing himself in the State House at Philadelphia, this last week of September, 1777, and the state and Congressional governments are in flight to the back country, Vice-President Bryan among them, some note may be taken of the latter's family, which it would now become necessary for him to remove, as well as aid in directing removal of the state government. As has been noted already, up to 1767, his family consisted of his wife and six children: Sarah, who was now a young lady of eighteen; Samuel, a youth of seventeen and of considerable natural ability; Arthur, now a boy of fifteen; Francis, a twelve-year-old boy; Mary, a child of ten years, and George, a year her junior. But since 1767, the records give the baptism of a daughter, Elizabeth, on June 21, 1769; a son, William, on August 25, 1771, born on July 12th; another son, Thomas, baptized on January 27, 1773, born on November 27, 1772; and Jonathan, born on October 16, 1774. These would now be little children of seven, five, four and two respectively, although there is some ground for the impression that the first of these died in early childhood. The whole family would thus be a large one of nine children, at the time Judge Bryan applied for the post of Port or Naval Officer of Philadelphia, and the eldest only eighteen.<sup>1</sup> It would not be strange therefore if Vice-

---

<sup>1</sup> The records of the birth and baptism of Elizabeth, William and Thomas are those of the Second Presbyterian Church of Philadelphia, although that of the last child, Jonathan, is in those of the First Presbyterian Church. This would seem to indicate that, since the records of the births of Mary in 1765 and George in 1767 are of the First Presbyterian Church, that the family were in the Second Church before about 1765; in the First for the next two or three years; back in the Second from about 1770 to 1772 or '3; then again in the First for a time; but later and finally in their "first love," the

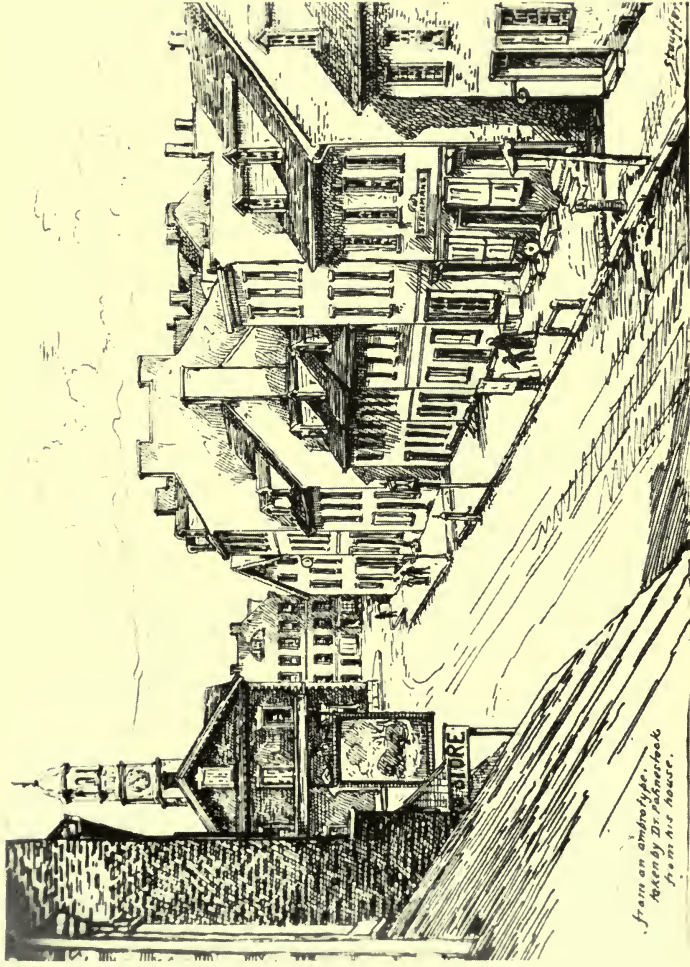
President Bryan should not arrive until the second day's meeting of the Supreme Executive Council at the new state capital.

It was no small jaunt, in a round-about course by way of Bethlehem, to take a state government out almost due westward for something over sixty miles to the village of Lancaster, lying in that rich Susquehanna valley that has long been synonymous with fat fields and prosperity.<sup>1</sup> And what is more the Congress of the union was on the way there, too, with its papers. There was great demand for the famous old Conestoga wagon, for which Lancaster is famous. The state and Congressional governments had been in the same building in Philadelphia and why should they not be in Lancaster? Both governments had voted to go there in emergency, the Congress on the 14th, leaving on the 18th and arriving, in force, first, so as to have a meeting on Saturday, the 27th. It was held in the Court House, in the center of the village public square. A two-story brick structure, surmounted by a belfry and steeple, with north and south clock-faces to tell the time to the courts below. The Congress gathered on the brick pavement of the first floor before the bench and bar used by the courts, and the great fire-place flanked by two pillars standing on pedestals sunk in the pavement. This day's meeting, however, convinced them that this building was not large enough for the two governments, for the Pennsylvania Supreme Executive Council would need the second floor rooms, and the Assembly the room the Congress were in; besides it would be just as well to have the Congressional capital farther inland at the present juncture. The result was that they adjourned to meet at York some twenty miles farther westward across the Susquehanna on Tuesday, the

---

Second Presbyterian Church. At least this is one way of accounting for the location of these records, which is rather unusual; although, as the present writer knows from personal experience, a baptism of a child may take place elsewhere than in the church of the parents for merely sentimental reasons; and Vice-President Bryan's personal regard for Rev. Dr. John Ewing, of the First, may have been the occasion of the last record, namely of Jonathan, in that church.

<sup>1</sup> The course up around Bethlehem was due to General Howe's army having control of the access to the old Lancaster road; and, indeed, it was thought possible that they might have to use Bethlehem instead of Lancaster. General Washington disposed his army where he could protect them, however.



*from an ambrotype.  
Acquired by Dr. Hubert Cook  
from his house.*

THE SITE OF THE CAPITOL AT LANCASTER, 1777-1778  
in which President Bryan was Chief Executive  
The above Court House is on the site of the one burned in 1784  
Courtesy of C. W. Dreyer, Lancaster



30th of September, where they would again take into consideration the proposed articles of Confederation, which was to be an even more centralized government than that now objected to, but supreme, in this state.

Wednesday, October 1st, President Wharton and the Supreme Executive Council, without the Vice-President, however, met in the upper rooms of the Lancaster Court House capital, and the Assembly, on the brick pavement in the room below, had been trying to get a quorum ever since Congress had given up the room to them, for they were due to meet even two days before Congress did. They were destined to wait over a week, while on Friday, the 3rd of October, Vice-President Bryan having arrived, the Council was hard at work up stairs, providing a gun-factory near at hand, expresses to the army, conferences with the Assembly committee, one of whom was a vigorous young man from Cumberland county, Robert Whitehill, destined to become one of the Vice-President's most efficient right-hand men.

On Monday, the 6th, the Assembly secured a quorum below stairs and, on Wednesday, because of the difficulty of keeping a quorum, decided to give the Supreme Executive Council nearly full powers of government. On Thursday, however, they concluded to add a few persons to the Executive and make them a Council of Safety, one of these to be Representative Robert Whitehill. On Sunday, the 12th, although the Council up stairs had adjourned without doing business, the Assembly, in consideration of the great activity of Vice-President Bryan, who was an adept at absorbing duties into his own person, voted to raise his salary to be equal to the President, £1000, to date from his first election. With the Council of Safety created, they adjourned on Monday.

According to the proclamation of the creation of the Council of Safety, composed of the Supreme Executive Council, Speaker John Bayard and eight other Assemblymen, the President or Vice-President and any six of the rest to be a quorum, they were inaugurated in the Council rooms, above stairs, on Friday, October 17th. One of

their first acts was the appointment of commissoin to take over all Tory property—that is, property of those who went over to the British side. Financial affairs occupied them much, and Vice-President Bryan was present every day. Supplies occupied much of their attention also. One of the curious references of the Council in which the Vice-President took part was the examination of a prisoner whom General Howe had sent to Mr. Thomas Willing, Robert Morris and Congressman Duer offering to the colonists all they had had in 1763, even yielding on paper currency, if they would give up independency, intimating that more troops were to arrive in the spring. This occurred on November 21, 1777. Vice-President Bryan and Attorney-General Sergeant were appointed on the 24th to issue a public statement on the matter, as was done on the following day. In this, after citing several previous deceptions of the same kind, as that through General Sullivan and that through General Lee, they said:

“Friends and Countrymen, be not deceived. If General Howe has anything to propose to Congress, the way is op[en]ed to him thro’ the usual channels. He can send a flag of truce; he can write; he is under no necessity of sending out an obscure body like a thief or a spy, to steal through our camp, without passports, without license. He can send a flag of truce to desire General Washington to prevent the cutting of boulding cloths; does the settling of a treaty of peace require less ceremony? No; but a message in writing, by a flag of truce, is not so easily evaded. General Howe might be loth to deny his hand-writing, tho’, it seems, he has not hesitated to deny his word. France and Spain are likely now to take a decisive part in our quarrel; a few months perseverance will establish our liberty and independence forever, if we are not false to ourselves; if we are driven to and fro, and deceived by every idle artifice of our perfidious enemies; trusting to Providence we may look forward with confidence to the hope of being speedily and forever delivered from the perfidy and tyranny of Britain; from the bloody and vindictive malice of our cruel enemies.”



Vice-President Bryan was not present on the 26th, or up to and including December 4th, when the Council of Safety agreed that the progress of the enemy had been so restrained that the Assembly election had been nearly all carried out, and that the Council of Safety was thereby extinguished. A proclamation to this effect was issued by President Wharton on the 6th.

While the Council of Safety had emergency war powers, while it was inconvenient to have Assembly meetings, this did not affect the regular meetings of the Supreme Executive Council, in which Vice-President Bryan was a most active leader, although he missed the meetings of early December as he did those of the Council of Safety. These were the dark days of Valley Forge and finances occupied the chief attention of the Supreme Executive Council in that upper room of the Lancaster Court House capital, as well as superintendence of Assembly elections as fast as the counties were able to carry them out. On the recommendation of Congress, they issued a proclamation on November 12th, ordered that the 18th of December be set apart as a day of prayer and thanksgiving.

From October 27th, newly elected members of the Assembly had been trying to get a quorum in the room below stairs and only succeeded on November 20th, when provision was made for the second election of President and Vice-President of the Supreme Executive Council on the following day. Mr. Wharton and Judge Bryan were re-elected and proclaimed on the same day. Four days later, they received word from Congress that the new Articles of Confederation were now submitted to the states and recommended for immediate consideration, as a "compact" between them; and urging the necessity for raising \$5,000,000 for expenses in 1778, to do this in part by confiscation and sale of estates of persons who had forfeited right of protection. Pennsylvania was asked to raise as her quota \$620,000, the only states assigned a greater amount being Massachusetts with \$820,000 and Virginia with \$800,000.

The next incident of especial interest, in the busy proceedings of both departments of government, was the ap-

pointment of December 15th by each, Vice-President Bryan and Mr. Thomas Scott representing the Council, of a committee to formulate and present a protest to Congress against General Washington's army going into winter quarters. There is no record of its further progress, however, unless the action of January 1, 1778, relating to petitions received urging a combined attack by Pennsylvania troops upon the enemy, in sending it to Congress, was a result of it. On the 16th, the Congress expressed its appreciation of the anxiety of the Supreme Executive Council to make an effort to regain their capital, and sent a committee to join the Council in conferring with General Washington and if plans were arranged the Congress would order neighboring state troops to aid. As Vice-President Bryan was not present until the 26th after this it is probable he was assigned to go to Valley Forge for the interview.

For the first two weeks of February President Wharton was absent, Vice-President Bryan presiding during that time, and for a time in March the Vice-President was absent. On the 18th of the latter month they followed the suggestion of Congress that the 22nd of April be a day of "fasting, humiliation and prayer," as an expression of the serious days of Valley Forge. Vice-President Bryan was absent much of March and to the 10th of April. This was a period of great activity in both Council and Assembly, the latter ordering the State's Congressmen to ratify the Articles of Conederation for the state, the members then being Dr. Franklin, Robert Morris, Daniel Roberdeau, Jonathan B. Smith, James Smith, William Clingan and Joseph Reed, James Wilson having been displaced soon after the fall of Philadelphia, so that he did not have occasion to take part in ratification, which would have been against his every conviction.

Early in May, 1778, the Act of Attainder, passed by the Assembly at the suggestion of the Congress, caused a great deal of work for the Supreme Executive Council in providing commissioners to handle forfeited estates, and naturally much of this fell to Vice-President Bryan as the lawyer of that body, and on May 8th, a proclamation ordering a con-

siderable number of persons to surrender themselves to legal authority of the state. During most of the latter half of May, Vice-President Bryan presided in Council and on May 21st another large list of suspected persons was published. Great activity characterizes this period in finance and supplies, which indicated that the spring military campaign of General Washington was decidedly vigorous and bode ill for the hold of General Howe on the capital of the state and the union.

On Saturday, the 23rd of May, 1778, while Vice-President Bryan was presiding in the Council room above stairs, news came, that President Wharton had died early that morning. The funeral was held on Sunday and at request of the Evangelical Trinity Church funeral arrangements for his interment there were made. The procession was in the following order. 1. The Military under Col. Gibson; 2. Physicians; 3. The casket covered with a pall, the pall supported by six Councillors; 4. The three sons of President Wharton; 5. Vice-President Bryan attended by the Secretary of the Council; 6. The rest of the Council; 7. The State Treasurer, Mr. Rittenhouse, and the Judges of the Supreme Court; 8. Delegates in Congress; 9. Speaker of the Assembly, attended by the Assembly Clerk; Members of Assembly; 10. Door-keepers of Council and Assembly; 11. Lancaster borough and county officials; 12. Coroner and Prothonotary; 13. Lawyers; 14. Officers of Army and Navy; and 15. Citizens. When the interment was taking place minute guns were fired on the Lancaster Commons to the number of forty-four. With the passing of President Wharton, Vice-President Bryan became chief executive of Pennsylvania on May 23, 1778, at the Lancaster capital.

## CHAPTER XII

### PRESIDENT GEORGE BRYAN OF PENNSYLVANIA, AT LANCASTER AND PHILADELPHIA

1778

The new chief executive of the commonwealth was probably but little more heavily burdened than he had been before; as, from the civil side, he had been practically chief executive almost ever since he held the office of Vice-President. Indeed the title seemed to have meant an alternate or co-operator, since there were no other duties attached to the office specifically. So that he had been actual chief executive in Council whenever the President was absent. He construed his office, however, as Vice-President acting as President, while a vacancy existed in the office, and so did not change his title during his whole period as chief executive. He was, however, President of the Supreme Executive Council in fact, on any ordinary construction of the term Vice-President, namely, one designed to replace the President in emergency; and his succession in case of death was automatic and did not require any further official action, although in a man who had not been so active a leader and absorbed so many duties to himself as Vice-President Bryan had, a precedent of another kind might have been inaugurated. Because it was an actuality—and in order to distinguish his service in this particular period from that which followed it as well as that which preceded it, the designation President Bryan will be used in this chapter.

And the first thing the Lancaster government did under the new chief executive on Monday, the 25th [1778], the next day after the funeral, was for the Assembly to resolve unanimously that independence had come to stay; and, in view of the Lord North proposals of the preceding 19th of February, designed to secure peace by an arrangement



PRESIDENT GEORGE BRYAN, 1777-1778  
From a portrait by Rosenthal, in Independence Hall, after the  
original in possession of George B. Logan, Pittsburgh



to restore the *status quo* of 1763, on consideration of abandoning purposes of independence; and also the Congress' note of it on the 2nd of April, they resolved that Congress only could treat with Great Britain; they praise the Congress for refusal to treat except on the basis of independence; that Pennsylvania's consent is an absolute necessity to any other course; that "this house will maintain, support and defend the sovereignty and independence of this state with their lives and fortunes;" and that the Council hold their forces ready to act on that basis.

These were very busy days in the up-stairs rooms at the Lancaster Court House capital as it began to be evident that the British could not hold Philadelphia much longer. And the lists of suspects grew until on June 15th, President Bryan issued, for the Council, the largest list yet announced. Then, at 11 o'clock, Friday morning, June 19, 1778, General Washington's messenger arrived with news that the British had left Philadelphia. The following day the *Pennsylvania Evening Post*, which had been appearing in Philadelphia during the occupation, said: "The British army, early last Thursday [18th] morning, completed their evacuation of this city, having before transported their stores and most of their artillery into the Jerseys, where they had thrown up some works, and several of their regiments were encamped. They manned the lines the preceding night, and retreating over the commons, crossed at Gloucester point. It is supposed they will endeavor to go to New York: a party of the American light horse pursued them very close, and took a great many prisoners, some of whom were refugees. Yesterday morning [Friday] the Hon. Maj. Gen. Arnold took possession of this city, with Col. Jackson's Massachusetts regiment."

President Bryan and the Council's first act on hearing the news from Philadelphia was to issue a writ of election for Council in that city to fill the vacancy caused by the death of President Wharton, and by Friday, a week later, June 26th, they were in Philadelphia. One of the first subjects acted upon was to arrange for a celebration, on Saturday, July 4th, of the first anniversary of the Declara-

tion of Independence. They, however, joined the Congress, which had also returned, on that date in "a grand festival" at the City Tavern on the southwest corner of Second Street, and what is now Moravian Street, just above Walnut. The toasts offered by the President of Congress are significant: 1. The United States of America; 2. The Protector of the Rights of Mankind; 3. The Friendly European Powers; 4. The Happy Era of the Independence of America; 5. The Commander-in-Chief of the American Forces; 6. The American Arms by Land and Sea; 7. The Glorious 19th of April, 1775; 8. The Glorious 26th of December, 1776; 9. The Glorious 16th of October, 1777; 10. The 28th of June, Twice Glorious, 1776-1777; 11. May the Arts and Sciences Flourish in America; 12. May the People Continue Free Forever; and 13. May the Union of the American States be Perpetual. Then followed, on the 12th, the arrival of M. Gerard, the first Minister from a great power, and, although it was Sunday, the rejoicing over the new Minister and the fleet of Count d'Estaing which brought him over, was almost equal to that of the first Fourth of July anniversary.<sup>1</sup>

The Philadelphia election that had been ordered resulted in the choice of Congressman Joseph Reed, who was a great favorite with the Bryan party and who had declined the Chief Justiceship the preceding year. He appeared before them on the 21st of July [1778] and showed he was deeply engaged in a Congressional Army committee of such importance that it would be impossible for him to attend soon, although he would do so as soon as possible. The same day there was published in the *Evening Post* a letter of 11th April, to "General Joseph Reed," in connection with which it was made public that an effort had been made to bribe him by offer of money and honors if he would try to bring about such a settlement as the British wanted; and

---

<sup>1</sup>The day following this—the 13th—there appeared the first, even though insignificant, irritation between Congressional and State officers, which got only part of a sentence on the pages of the Colonial records. Secretary Charles Thomson made "an indecent and affronting applicaton" to President Bryan complaining of a Col. Proctor unjustly holding a house from him.



that Congressman Reed had said that he was not worth purchasing, but even if he were, the King was too poor to buy him—all of which greatly contributed to Congressman Reed's popularity in the state. Also he headed a paper then circulating for signatures and published on the 25th, in which the subscribers agreed to bring late traitors and suspects of the recently occupied territory to justice and punishment.<sup>1</sup> In fact, this lawyer, who, with James Wilson, had received the degree of Master of Arts on the same day from the College of Philadelphia, had practically been given the latter's place in Congress by the Bryan party, and they wanted to use him as a foil to that vigorous and able opponent of the present constitution.

A few days later, on August 6th, President Bryan took part in the official reception to the first foreign minister accredited to the new government of the United States. The proceedings are interesting: Congressmen Lee and Samuel Adams, in a "coach and six" brought Minister Gerard from his residence to the State House, Mr. Lee sitting with the Minister, at his left, and Mr. Adams on the front seat, the Minister's own "chariot" following with his secretary. When they arrived at the east room, they saw President Laurens sitting at his table on his elevated platform, and the Congressmen arranged in a semi-circle on either side of him, having at the nearest point of the circle, chairs for the Minister, and his two escorts, facing the President. It was one o'clock, when the Congress being seated, he took his seat. Thereupon, in the space behind the bar, President Bryan entered at the head of about two hundred representatives of the state and city government and leading citizens. Minister Gerard's credentials were then handed to President Laurens, and Secretary Thomson then read and translated them, whereupon Congressman Lee introduced him and the entire assemblage rose together, bowed and were again seated. Minister Gerard then rose and addressed the Congress, "Gentlemen," he began, "the

---

<sup>1</sup>This was the organization which one writer nicknamed "The Furious Whigs," claiming that they wanted punishment more than independence. It was these prosecutions that caused so much increase in bitterness of feeling, naturally.

connection formed by the King, my master, with the United States of America, is so agreeable to him that he could no longer delay sending me to reside among you for the purpose of cementing it." Among other things he said this alliance was to secure the peace which was its object. President Laurens responded, lamenting "that lust of domination which gave birth to the present war" and giving the usual assurances to the new minister—this latter being done while Congressmen all stood. The two addresses, on paper, were exchanged, and all were again seated. Then all rose, the Minister and Congress bowed, whereupon Minister Gerard bowed to President Laurens and retired as he had entered; and later a banquet was held, with the Congress as hosts, presumably at the City Tavern, as was usual. The news states that at this time all the bells of the city, that had been removed, were now restored.

All of the disaffected looked upon President Bryan as their nemesis, for his name was signed to all the proclamations and legal papers concerning them. The profiteers and forestallers held him in like awe and fear, and the public looked to him for aid in regulating exportation of supplies, which was done on August 1st, by an embargo on all food supplies from the port of Philadelphia for a period of thirty days, a mode also of meeting the needs of keeping supplies from the enemy, as Congress had enacted on the 8th of June, but against which President Bryan and the Council had protested as beyond the powers of Congress. It was a matter of no easy regulation, and on August 18th the Council had to apply to the Assembly for aid. The latter body had on the previous January 2nd, passed an act to control profiteering or "forestalling and regrating," as they called it them, but it was proving a matter of great difficulty in administration, even though the act appointed a great number of Commissioners to handle it.

This situation was intensified by the determination of Mr. Wilson, who had now settled his home in Philadelphia at the southwest corner of Third and Walnut Streets, and others who more seriously opposed the Bryan constitution, to enter upon a vigorous campaign to control the

next Assembly as a first step to securing a new constitutional convention. This was accompanied, on August 17th, by the Assembly authorizing the Council to employ additional legal aid in the various prosecutions which had become so numerous, and on the 21st, they employed Mr. Wilson's supposed rival and the favorite of the Bryan party, General Joseph Reed, as chief counsel for the current year. President Bryan and the Council had occasion to listen to pleas for clemency in some capital cases. On one occasion, August 31st, when several citizens made a plea for mercy for four condemned men, President Bryan told them of "the impossibility of supporting an army, without making examples of offenders in this way, and that whatever the feelings of the members of Council may have as men, it must be remembered that the Council are to consider themselves as being bound by their station to perform some of the arduous duties of magistrates," suggesting, however, that it would be wholly proper for them to submit a written record of their plea for future reference. It can readily be seen, therefore, that Pennsylvania was brewing a considerable confusion and materials for very bitter feeling.

During the next month, the month of September, 1778, a case of capital importance arose in President Bryan's administration, that was to be one of the most notable cases in the history of state and national rights; and it was destined to last for thirty years and make Pennsylvania the first state to be in actual rebellion against the union. On September 8th the state of Pennsylvania's armed brig, *Convention*, aided by an American privateer, *Le Gerard*, brought into Philadelphia the British sloop *Active* and delivered it to the state government, of which President Bryan was chief executive and Commander-in-Chief. It was found that it was a vessel in which some American prisoners, led by Gideon Olmsted of Connecticut, had overpowered the British crew and taken possession and were about taking it to port as a prize. The captain of the *Convention*, however, denied that the four prisoners had full control of the vessel and her crew of fourteen, and laid claim to it as a prize for Pennsylvania and the crews of the *Conven-*

tion and *Le Gerard*. As it happened, an act for establishing a State Court of Admiralty, already published, was ordered engrossed in the Assembly the day before, and on the following day, the 9th, was immediately passed, for it was at once evident that Mr. Olmsted proposed to contest the prize. This act said that the "finding of the facts by the jury shall be without re-examination or appeal." Judge George Ross, of Lancaster, was judge of this Admiralty Court, when, on the 14th, Jonathan Dickinson Sergeant, the Attorney-General, presented the claim of the *Convention's* captain and the hearing was set for October 6th. Lawyer William Lewis, thereupon, presented the claim of Mr. Olmsted and his companions. The case was tried on November 4, 1778, and Judge Ross' decree provided, under jury determination of facts, that one-fourth go to Olmsted and his friends, and the three-fourths to the crews of the *Convention* and *Le Gerard*. Olmsted at once appealed to Congress claiming in full, and, in the same court room, in the State House, on December 12th, after President Bryan had ceased to be President, but was elected for his third term as Vice-President—so much of which may be anticipated. The Congressional Commissioners of Appeal, the predecessor of our national Supreme Court, the Hons. William Henry Drayton, William Ellery, John Henry and Oliver Ellsworth, decreed a reversal of the state court in favor of Olmsted and his friends, on December 15th. On the 28th of the month Judge Ross, while acknowledging the right of the Congressional "Court of Appeals," as he named it, to set aside a decree of the Admiralty Court, yet because it was on the facts as found by jury, he was unable to change his own court's decree and so ordered sale. This sale was laid before Judge Ross' court on the following January 4 [1779], showing that it brought £47,981, and something over, Pennsylvania currency, so far as the cargo alone was concerned, the sloop still unsold. It will thus be seen that it was a very attractive prize, and that the issue lay in a disagreement as to the facts, the Congress considering that the Admiralty jury at Philadelphia were not right on the facts. General Benedict Arnold, having a financial interest

in the matter, had urged the Commissioners to act quickly and they commanded the Marshall, too late, to hold possession, but he showed them Judge Ross' receipt! The Pennsylvania court had the money and held it against a decree of the highest court of the union on the basis of a clear statement of a Pennsylvania statute. The Congress, on March 6 [1779], on a vote of 21 to 6—Pennsylvania being among the 6—affirmed that such cases were matters of international law and that it could not be an ultimate state jurisdiction in either law or fact, or the United States did not have the power of war and peace. From January to June, 1779, correspondence passed between Congress and the Supreme Executive Council of Pennsylvania; but the Assembly had authorized Judge Ross to pay the money for sale of both cargo and sloop over to State Treasurer Ritzenhouse. So far as Pennsylvania was concerned, now in control of the Bryan party, the case was considered closed; altho' it was to remain to Judge Bryan, himself, the following year, to lead in writing and securing the passage of an act (8th March, 1780) abolishing jury trial in Admiralty cases and so making the United States supreme in international matters; and, it may be added, but one other state followed him in it, namely, South Carolina.<sup>1</sup> This event, so far as Judge Bryan's relation to the law and right is concerned, is typical of his character. He was firm for this settlement of this case under the then existing state law and the uncertainty of the law of the Congressional union; but, when he came to see the bearing of it upon future national action, restored the Admiralty Court to its proper civil law basis and consequent harmony with the developing law of the young nation. He was firm to rigidity, but open-minded and fearless to new truth, and so inspired a profound confidence in his followers and the respect of all.

On October 12, 1778—to return to the date when this

---

<sup>1</sup>This case had other features of state rebellion, of a most serious and unique sort, at times during the next thirty years before it was finally settled under Chief Justice John Marshall, and Judge Bryan had other relations to it in years to come, which will receive attention later. One of the best accounts of this case is *The Case of the Sloop "Active"* by Hampton L. Carson, in *The Pennsylvania Magazine*, January, 1893.

case began—General Reed resigned from Congress as a preliminary to the election, for he was put up as a candidate for both Council and Assembly, and, as it turned out, was elected to both. The Assembly election had been so close in many cases that there were several contests, so that from October 26th, there was no quorum until November 6th. There were so many, however, on October 30th that it became evident there was not going to be enough room, unless some changes were made in the Assembly room at the State House, so it was decided to meet in the College building at Fourth and Arch Streets until the alterations were made. On the 6th of November, however, an uncontested quorum was present, with a serious case of contest from Chester county. Then also it appeared how successful the campaign waged by Mr. Wilson proved to be; for of the 59 uncontested members returned there were 19 who were so determined not to take the oath that would prevent them taking action to change the constitution, that a form of reservation was passed and the 19 that added that reservation, were headed by Robert Morris. Indeed there were but 22 who took the oath without reservation that day. It will be seen, however, that the Bryan party were able to organize the Assembly, by election of John Bayard as Speaker. Of those who took the oath without reservation, but one was in the city, although four were in the county of Philadelphia. All but one did in Bucks; one in Chester; three in Lancaster; one in Cumberland; two in Berks; four in Northampton; and one in Northumberland. The 19, with the reservation, were four in this city and two in the county of Philadelphia; three in Cumberland; three in Berks; one in Northampton; and the whole six in Bedford. These were changed later, and the Wilsonites had great hopes of securing a majority yet. Indeed before the end of the month they gained four more making 23, which was still a minority, however. Mr. Wilson enlisted General Wayne to help in the Chester county case, in hopes a new election would be ordered. "Matters are now approaching a crisis," he wrote; "and, in a few weeks, it will be determined, whether the state of Pennsyl-

vania shall be happy under a good constitution; or oppressed by one, the most detestable that ever was formed."

The Chester county election case came up on Tuesday, November 17, 1778, Mr. Wilson appearing as legal counsel for his party candidates, and it continued until the 23rd, one of the most notable cases in the state's history. The Bryan party, however, were able to win by 27 to 31 as against 17 to 21, the vote varying that much on its different forms, 27 to 31, however, representing the real standing of the two parties in the Assembly, which was close enough to make it a very tense contest and practically to insure that a new popular expression on calling a constitutional convention should be provided for. And it was voted on the 28th, by the Assembly, unanimously. It provided that on March 25, 1779, an election should be arranged for to take place on the first Tuesday in April, at which time a vote as such for Assemblymen, shall be taken, in two ballot boxes, in one of which were to be put the votes for and against a convention and in the other the names of members of the convention in case it should be decided upon, and that they should meet on June 1, 1779. The convention was to decide nine features: 1. A single or double chamber legislature; 2. If double, how the second branch and executive shall be constructed; 3. If a single house, then shall any revision of any other kind be provided? 4. Shall justice and field officers of militia be appointed by the executive? 5. Shall the Council of Censors be abolished? 6. Shall the President and Vice-President, after three years, if capable and worthy, be eligible for re-election? 7. Shall judges' salaries be fixed and certain, so as to make them more independent? 8. Shall Congressional delegates not be eligible for three successive years, to agree with the Articles of Confederation? 9. If these changes are made, how shall the oaths be modified? These results were to be published and a vote taken on the new features, they were to become a part of the constitution. The Council were asked to publicly state their approval of these resolutions, and 5000 copies in English and 5000 in German were to be published. In this connection it may be noted that three days before

this General Joseph Reed notified the Assembly that he had been elected to both Council and Assembly, and that as he had promised, if elected, to serve in the Council he resigned his seat in the Assembly.

Meanwhile this month of November, 1778, had again brought President Bryan's keen desire to see the new freedom consistently extended to *all* inhabitants of Pennsylvania now held in slavery. It will be recalled that he had persuaded the Council to urge it upon the Assembly the previous year; and indeed all religious denominations nearly, led by the Quakers, who had for years agitated for its removal in their own body so successfully that by 1776, to own a slave was a disownable offense in a Quaker Meeting.<sup>1</sup> Other bodies had joined in petitions and much manumission by individuals was effected, so that Vice-President Bryan had represented a very insistent voice when, in 1777, he had secured the Councils' action in urging an abolition law upon the Assembly. The Assembly were diplomatically inclined to resent such action by Vice-President Bryan and the Council, but merely ignored or postponed it indefinitely, because they held that all legislation should originate in the Assembly—the real reason, however, being that many slave-holders of Pennsylvania did not want to give up their property any more than many slave-holders of the South did in far later times. When he became President, however, he determined to press the matter again and did so during this month of November, on the 9th instant, about three weeks before General Reed's acceptance of election to the Council and his declination of election to the Assembly. The Assembly again diplomatically ignored or postponed it, for pressure of the slave-holding element was still strong. So that they had done nothing about the heads for a law that President Bryan had suggested, when on the 24th of this month, General Reed had qualified as a Councillor and resigned his seat in Assembly.

Before passing this subject let us see what President Bryan wrote to the Assembly on November 9th, concerning freedom of the slaves: "The late Assembly," he writes,

---

<sup>1</sup> *The Negro in Pennsylvania, 1639-1861*, by Edward Raymond Turner, p. 75.



“was furnished with heads of a bill for manumitting infant negroes born of slaves, by which the gradual abolition of servitude for life would be obtained in an easy mode. It is not proposed that the present slaves, most of whom are scarcely competent for freedom, should be meddled with, but all importations must be forbidden, if the idea be adopted. This, or some better scheme, would tend to abrogate slavery, the opprobrium of America, from among us; and no period seems more happy for the attempt than the present, as the number of such unhappy characters, ever few in Pennsylvania, has been much reduced by the practices and plunder of our late invaders. In divesting the state of slaves, you will equally serve the cause of humanity and policy, and offer to God one of the most proper and best returns of gratitude for his great deliverance of us and our posterity from thralldom. You will also set your character for justice and benevolence in a true point of view to all Europe, who are astonished to see a people, eager for liberty holding Negroes in bondage.” This was signed by Mr. Bryan as chief-executive.<sup>1</sup>

Returning now to President Reed, on the 25th of November, he not being present yet, President Bryan, or as he technically signed himself, “Vice-President,” secured action by the Council asking the Assembly to join them in appointing a committee to arrange for choice of a President and General Reed and Messrs. Hart and Smith were named as committee of the Supreme Executive Council. On the following day President Bryan issued a Proclamation of Thanksgiving, as suggested by the Congress, and on the 30th the Reed committee reported that on the following day, December 1, 1778, the Assembly would come to the Council room and move to elect both a President and Vice-President, after which they should all adjourn to the Court House balcony at Second and Market Streets, and make public proclamation of the election of both, and then the two bodies should dine together at the City Tavern on Second Street, near Walnut, at the southwest corner of Moravian Street, opposite the old “Slate-Roofed House,”

---

<sup>1</sup> *The Pennsylvania Packet*, Nov. 28, 1778.

once the executive mansion of William Penn, the first executive.

The election occurred as arranged on Tuesday, December 1, 1778, in the Council's upper west room at the State House; and when the vote was taken by the Council's Secretary and the Clerk of the Assembly, it was found that, for President, there were 61 votes for General Reed, and one for President Bryan, no doubt General Reed's own vote, and one for James Read, whereupon General Reed was declared elected. The vote for Vice-President gave 62 for President Bryan and 1 for Mr. Hart, so that Judge Bryan was again elected Vice-President, with even more power than he had before, and with Lawyer James Wilson's chief rival as President, one of those, too, who had been converted to the single chamber legislature of the constitution, which he had opposed in 1776. With the public proclamation President Bryan's service as chief executive of Pennsylvania came to a close, this first day of December, 1778.

## CHAPTER XIII

### VICE-PRESIDENT GEORGE BRYAN OF PENNSYLVANIA AT PHILADELPHIA. THIRD TERM

1778

On this first day of December, 1778, Vice-President Bryan was entering on his third term in that office. This does not signify anything but that he was desired as alternate to the executive office during his full three years' term as Councillor—the extreme limit to which anyone could serve as a Councillor, until an interval of four years thereafter had elapsed. It also meant that while, in that three years, so far, there had been three chief executives, there had been only one Vice-President, Judge Bryan, who, in activity and absorption of the work of the Council, had been very nearly chief executive ever since his election as Vice-President on May 4th. Had he been elected to Council on the regular day of election, November 5, 1776, his term of office as Councillor, and, hence, Vice-President, would have expired on November 5th, 1779; but, as has been seen, his actual term, as Councillor, began with his election and qualification on February 21, 1777, while his election as Vice-President of the Council did not occur until March 4th, and his inauguration on March 5th. The election of President and Vice-President of the Supreme Executive Council was, like that of the Assembly, an annual affair, while election of the Council was in classes and for three years, in order that men of experience would always form a majority of that body. It was expected that the annual election of both Assembly and President and Vice-President of the Council should occur on November 5, 1776; but as it refused to function properly, they made the annual election in November, 1777, just as if it had; and so caused Vice-President Bryan's first term to be only eight months

and sixteen days, and his second one to be one year and ten days, a total of one year, eight months and twenty-six days, up to the date of his election to his third term as Vice-President. If to this is added twelve days as Councillor, before his first election as Vice-President, a total of one year, nine months and eight days is the length of his service as Councillor up to this election as Vice-President for the third term. His third term would, therefore, close officially with the completion of three years, or one year, two months and twenty-two days more, which would carry to November 5, 1779.

The Vice-President had the reins of government of the state in his hands, it need hardly be said, more fully than any other man, even the able lawyer, General Joseph Reed, now the President, and for a few days President Reed was not even present. The proceedings of Council were composed of the details of government for from December 5 to February 1, 1779, as the Assembly had a recess during that period. This new Assembly was a serious concern of the Council, of which Vice-President Bryan was the controlling power, for a party vote on December 4, 1778, the day before adjournment showed a line-up of only 28 to 23, a margin of 5 only for the Bryanites over the Wilsonites, led by Robert Morris—or, as they were then often denominated, the “Constitutionalists” over the “Anti-Constitutionalists;” for the whole bone of contention in state politics had now become one of favor or enmity to the new form of the old constitution.

Therefore, on February 5, 1779, the Council adopted a formal message to the Assembly, as the constitution really provided for the executive, but which, as has been said, the Assembly was inclined to resent, especially if it took the form of an actual draft of a proposed law. This drew attention of the Congressional call for \$15,000,000; state military administration; profiteering; abolition of slavery; Virginia and Connecticut claims; creation of a Court of Errors; and the disposal of the proprietary estates. The part of this message that made it notable, was the renewed incorporation of Vice-President Bryan's appeal for an act

of abolition of negro slavery. "We would also again bring into your view," it read, "a plan for the gradual abolition of slavery, so disgraceful to any people, and more especially to those *who have been contending in the great cause of liberty themselves*, and upon whom Providence has bestowed such eminent marks of its favor and protection. We think we are loudly called on to *evinced our gratitude*, in *making our fellow-men joint-heirs with us* of the same inestimable blessings, under such restrictions and regulations as will not injure the community, and will imperceptibly enable them to relish and improve the station to which they will be advanced. *Honored will that state be in the annals of history, which shall first abolish this violation of the rights of mankind, and the memories of those will be held in grateful and everlasting remembrance, who shall pass the law to restore and establish the rights of human nature in Pennsylvania.*<sup>1</sup> We feel ourselves so interested on this point, as to go beyond what may be deemed, by some, the proper line of our duty, and acquaint you that we have reduced this plan to the form of a law, which, if acceptable, we shall, in a few days, communicate to you."<sup>2</sup> Merely heads of a law were suggested before, but, in the present instance, Vice-President Bryan had drafted a law.

The 28-to-23 Assembly were receiving somewhat of a bombshell in this part of the message, and found it impossible to avoid the subject and most difficult to decide how to answer the Supreme Executive Council this time. On February 3, 1779, they considered a resolution stating that they could not consent to receive any bill from the Council; but someone suggested appointing a committee to prepare an abolition law, "which committee will no doubt receive any assistance that may be offered them." The 22 Wilsonites favored this, but the 27 Bryanites voted against it and actually carried, 29 to 21, the dismissal of the whole answer as was done before; and then voted a motion that

---

<sup>1</sup> Italics inserted by the present writer, for obvious reasons. This shows the status of efforts of Vermont to do it by a constitutional, or Bill of Rights, "ought to be," as a logical conclusion of the "free and equal" clause of their constitution. It is plain that it had not yet been done by any state, anywhere, in an uncontested way.

<sup>2</sup> *Journals of Assembly*, Vol. 1, p. 307.

all bills ought to originate "in this house." This was not because they did not favor abolition of slavery, for they did actually appoint a committee which brought in a law of their own, based quite largely on the plan of Vice-President Bryan's.<sup>1</sup> On February 15th, the Council and Assembly had a conference in the latter's chamber, in which President Reed disclaimed for the Council any assertion of right of proposing a bill, or, as the Assembly construed it, trying to take part in legislation; but that as executors of laws, it appeared as if their knowledge of weak or strong points in a law might make it a duty to offer drafts or heads, submitted merely as suggestions, to be used or not as the Assembly saw fit. This sensitiveness of the Assembly, even against their political leader, Vice-President Bryan, was merely the old nearly century-long determination to have no legislative activity arise in the Executive Council, and they did not now hesitate to remind even Vice-President Bryan, as well as the whole Council of this, to them, vital feature of the state constitution, as they had done more than once in colonial days, when the Council was executive, in an interregnum or in absence of the Governor. Such an incident shows the tremendous traditional instinct against a second chamber in Pennsylvania; and it must be taken into consideration to understand the keenness, tenacity and bitterness of this long struggle *against* a *second* house, rather than *for* a *single* chamber—paradoxical as that may sound—and one must see in this the basis of Pennsylvania's opposition to anything more than one house in the Declarational and Confederational union.

With this sentiment so strongly entrenched, it is not strange, especially when, it may be taken for granted, the Bryan leaders saw to it that petitions were industriously circulated, that by February 25, 1779, with the vote on a new Constitutional Convention imminent, that petitions should flood the Assembly pro and con, especially con, on rescinding the order for such election. One published in

---

<sup>1</sup>This was published in *The Pennsylvania Packet* of March 4, 1779, for public consideration, and is not in Judge Bryan's phraseology at all, and may be the one said to have been drawn by William Lewis. Its publication aroused the slave-holders and killed this particular bill.

the *Pennsylvania Packet* of 9th Feb., 1779, has a significant paragraph: "Sixthly, Because a single House of Assembly having hitherto been found sufficient to all the good purposes of government, except when shackled and oppressed with the obstructions and negatives of the Crown of Britain and the former Proprietors of Pennsylvania; therefore we can see no reason to apprehend, that, as these arbitrary restraints and negatives are happily removed, two Houses can now be necessary, where one before was sufficient."

The other side had their advocates in abundance. One of the shrewdest of these appeared in the *Packet* of February 16, 1779, for although he signed himself "A Constitutionalist," he quoted from the Supreme Executive Council's message suggesting the need for a Court of Errors and Appeals, the following, which shows him on the other side: "It appears to us," he quotes, "that the determination of a single tribunal binding upon the lives and properties of the subjects of the state, without review or revisal, *in any case*, must, from the *frailty of human nature* ONLY, soon be productive of great inconveniences." He says this contains the substance of all that has been or can be said against a single chambered legislature! He claims four-fifths of the electorate are disfranchised by test oaths but that three-fourths of them are against the present constitution.

The flood of petitions were taken up on February 27, 1779, and so large a mass of them were against voting on a convention that a vote rescinding the order, for one election was taken that afternoon and it carried by the tremendous majority of 47 to 7, the seven being four from Philadelphia—Robert Morris, Thomas Mifflin, Samuel Meredith and George Clymer, and three from Bedford county, all intimate friends and followers of James Wilson. These formulated their reasons for dissent, chief among which was that the present constitution did not provide political liberty, because of centralization of power in one body; that the executive was so limited and unweildly and subordinate to the Assembly that it was weak and despotic by turns; that the Council of Censors was a dangerous instrument; the

mode of appointing justices and militia was a hindrance to justice; and others equally forceful.

This action of the Assembly was the signal for a great uproar. On the one hand it meant the entrenchment of the old constitution and put the state government and all its defenders on the aggressive. Acts against this constitution were now treated as treasonable, when before there would have been more flexibility. The laws against profiteers became more stringent, more care was taken to prevent grains being used to make liquors. The confiscation of estates became more drastic and institutions with any evidence of Anti-Constitutional backing were scrutinized more severely. All institutions based on Proprietary charters were overhauled and measures of reorganization canvassed. The Penn estates were among these, and on February 26th ex-Governor John Penn asked for delay in order to prepare counsel and a defense. The confiscation of Lawyer Joseph Galloway's estate, which included two fine houses at the southeast corner of Sixth and Market Streets, led the Assembly to set aside one of them on March 18, 1779, as the chief executive mansion, for President Reed. On the 30th of that month ex-Governor Penn was ordered not to exercise any powers under his charter but those concerning manors, and six days later the opinion of Chief Justice McKean on the status of the Penn estate was ordered published.

Before this time, sometime in February or early March, Lawyer James Wilson and his followers organized the Republican Society with Dr. Franklin's son-in-law, Richard Bache, as President, and with eighty-two members, among whom were the Morrises, Cadwaladers, Nixons, Hopkinson, Mifflins, Rushes, Thomson, and others. They had an appeal already for publication to influence the elections, when the rescinding order was announced. With an explanation, they issued it on March 25th, in the *Packet* and other papers. In this they expressed their determination to resist the tyranny of the present constitution and in language that plainly bespoke the writing of Lawyer James Wilson. "Let not such a glorious occasion be lost," it reads.



“Perhaps it may never return. Rivetted oppression, rendered doubly insupportable by unavailing repentance and regret, may be the only portion left you. The distant probability that this may be your case and ours fills us with the most anxious concern; and induces us to communicate to you a number of particulars, which are either unknown or misrepresented. Our honest freedom, we are well assured, you will take in good part. Our situation in the capital gives us an opportunity of being thoroughly acquainted with facts and characters and schemes, which are not seen, or are seen through a disguise, in the more distant places of the state.” They warn the public against the charge that the opposition springs from Tories, and give their own names to prove it false. They say the first offices in the state government have been offered for their support of the constitution, and they have declined. They point out their objections to the old constitution: The centralization in the Assembly, which they treat at length; the mode of appointing the judiciary; “the jubilee of tyranny” at the end of each seven years, in the Council of Censors. They say of the Convention: “A set of men, chosen by not a tenth part of the inhabitants of the state, met at Philadelphia, and called themselves Representatives of the Freemen of Pennsylvania.”

Then comes their news of the rescinding order, and they devote over two columns to that. The people of Pennsylvania have never consented to that constitution, they say. Even 16,000 and none would intimate there were more petitioners than that, they say,—even 16,000 are not a majority of Pennsylvania.

To this the Secretary of the Council, Timothy Matlack, replied in bold, peppery force: He ascribes the Republican Society’s papers to James Wilson. “To him be the honor or the shame of the consequences which may arise from them,” he says. He thinks these papers will win more for the constitution than win away from it. He is quite proud of the fact that he, as an office-holder, makes his daily bread that way. He warns them that Dr. Franklin was head of the Convention and, he says, favored the constitution;

and that his opinion would weigh down that of the whole Republican Society put together. He tells them to "count how many steps there remains before you, between you and the line on which is marked Conspirators." This appeared on March 30, 1779, in the *Packet* and other papers.

Thereupon the leading friends of the constitution organized a rival body called The Constitutional Society, with the artist, Charles Wilson Peale, as chairman, and on April 1, 1779, published in the *Packet*, their "Principles and Articles" of association.<sup>1</sup> The preamble and the text show an attempt to meet all the points made in the papers of the Republican Society. "In making this declaration," they say, "we wish to have it known, that the original promoters of this Society are among the first, and have in every instance been among the foremost, to promote, and afterwards to support, the Independence of the United States in general, and of this state in particular; and although an excess of service might, if any pretense can be assigned, give some color of title to superiority of privilege, yet impelled by the same justice and generosity of principle to extend the blessings of freedom, which first called us forth to defend it, we not only disclaim all such dangerous pretensions, but will, in behalf of ourselves and others, whether formally connected with us or not, discountenance and oppose all encroachments or innovations on the common constitutional rights to which every citizen of this free state is, or shall hereafter be, entitled by allegiance. We, therefore, the subscribers, members of this Society, to be hereafter called and known by the name of the Constitutional Society, do agree and unite under the above principles, together with the following, and such other rules and regulations as this Society shall from time to time find it necessary to establish." They are going to stand for equal liberty, support the present government of both state and union, freedom of ballot,

---

<sup>1</sup> From the MSS. autobiography of Mr. Peale, to which Mr. Horace E. Sellers has kindly given the writer access, it appears that he had just settled in Philadelphia from Maryland in the opening days of the revolution and was impulsively enlisted in the Bryan party, before he quite realized what it all meant. After he left the Assembly, however, he withdrew from political life, apparently in great disgust and regret for much of it; so that he was a mere episode in the Bryan party purposes, looking at it as a whole, although very prominent at this time and for a couple of years.

impartiality to all, without private resentment, actively look after the welfare of both state and union, and support the majority when the majority support freedom. All of this meant a serious campaign during the spring, summer and fall of 1779.

This was five days before the Assembly was to adjourn on April 5th; and just eight days previously, Vice-President Bryan had been selected by the Assembly to head a commission, which was to meet a similar commission from Virginia at Baltimore to settle that perennially vexing question, as to what was the boundary of those two states westward of Maryland, whose own joint boundary had been an even more vexing one ever since the Quaker colony had received her charter in 1681. Vice-President Bryan's colleagues were his distinguished pastor, the Rev. Professor John Ewing of the College of Philadelphia and the celebrated astronomer, David Rittenhouse, now State Treasurer, in possession of the prize-money from the Sloop *Active*, and holding it against the uncertain power of the United States government. This distinguished trio received their instructions from the Assembly on April 3, 1779, two days before adjournment, to the general effect that they were to arrange a true and permanent boundary, if possible; but, if not, a temporary one. They at once began a correspondence with the Virginia commissioners, the President of William and Mary College, Rev. James Madison, who was later to become the first Episcopal Bishop of Virginia, and Robert Andrews; and arranged to meet in Baltimore on August 31, 1779. Vice-President Bryan, as the highest ranking officer, presided. They did not have any of the old perplexing and complicated questions of the boundaries between Maryland, on the one side, and Delaware and Pennsylvania, on the other, settled ten years before, in the "Mason and Dixon Line," in which also the Rev. Professor Ewing had had a part. That line, so far as Pennsylvania was concerned, was her accepted boundary, so far as Maryland was concerned, and all she desired was its extension from the Delaware river five degrees westward, as the charter provided. The point from which Pennsylvania desired to

measure this five degrees was, naturally, the western-most point of her Delaware river line, which, by the way, would be on the Mason and Dixon line, as far as Maryland extended westward. Technically, of course, then, the western boundary of Pennsylvania would then have to parallel the windings of the Delaware; but Pennsylvania thought that hardly feasible and proposed a meridian line northward from the end of the five degrees, measured on the Mason-Dixon line.

Before entering upon the proceedings at Baltimore on August 31, 1779, it will be interesting to get a glimpse of Baltimore through the eyes of Vice-President Bryan: "This town," he wrote President Reed in the earlier part of that day, "filled with industrious people, has suddenly sprouted out to the size of 1000 dwellings in a country of indolence. The country hereabouts is a poor gravelly soil. They talk of fine land in the necks which lie eastward towards the Bay, and of good farms ten or twelve miles northwest inland. But I fancy the town is rather too large for the neighboring people, slothful as they seem, to supply. Meadow, they seem to have little, scarce any marsh on their rivers have I seen. All the shores are gravelly and dry. This inattention of the Marylanders to the vast advantage of the Baltimore market is easily accounted for, from looking back to the fettered state of trade formerly, as conducted by a combination of little Scotch dealers, who kept the people in such bondage as stifled all industry. The cash trade of the land and the building this town has indeed removed many obstacles, but the habits of a whole people, educated and confirmed in indolency, are hardly surmountable. The readiest remedy certainly would be to introduce some new farmers, bred in a land of industry. Against this, the difficulty of getting lands for them is urged; for the law of inheritance in the oldest son, the difficulty of selling real estate for common debts, entails, and the shame of parting with paternal lands, combine against strangers. An unaccountable jealousy, too, against this collection of strangers, as the inhabitants of the town generally are, is no small embarrassment. Narrowness and stupidity pre-

vented the houses here, which are on bad ground, that is to say, low, flat and under the hills, from being planned on an elegant spot two miles lower,—a narrow point between two basins, with deep water adjoining, and high ground between. At Baltimore they soon found a great impediment to business; their ships of large size, for want of depth, being obliged to lie a mile off the wharf. This last circumstance has induced many to build at the place where the vessels lie, and thus a village is grown up there on a remarkable neck of land called the Point, and the place is growing fast. Both there and here we find brick buildings going forward, for rents are very high. On taking the number of persons in this town and the Point, which are indeed called one town, there appeared not above five to a family, which leads to a suspicion that we [Philadelphia] count our citizens too largely.

“Butter is at four dollars a pound. Hay £90 to £120 per ton. Vegetables very dear. Beef (less than our price) 10s.

“This place was formerly more subject to fevers and agues than now. The stillness of the basin before the town, and some low ground, since filled in or drained, has altered this. But there is scarce any mud to be seen; all is gravel. The tide is very slack everywhere, and rises only four feet. It swells, but has no current at the town. All the inhabitants seem healthy. Indeed, all around this place, the nature of the soil promises better for health than our town. The very spot of Baltimore is, indeed, too flat, and under high ground, but is a bed of coarse gravel.

“They raise no tobacco in these parts, or at least very little. That article is had from Virginia on easy terms by water. By this, they trade to Europe at this time on a better footing than we do.

“The fort here I have not seen, but I perceive that a small body of men might pass up the main river, Patapsco, without difficulty, come behind it and do what they please, by a march of two miles only.”<sup>a</sup>

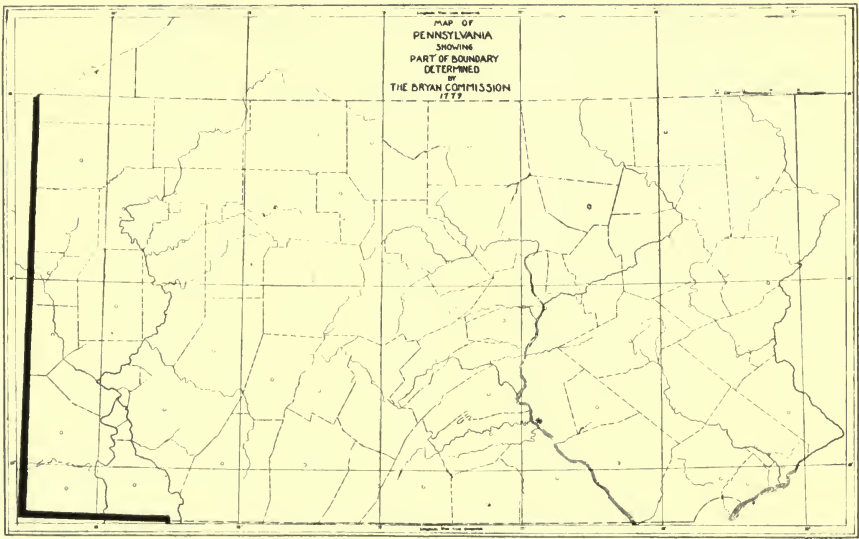
---

<sup>a</sup> Something of this kind was attempted, and nearly with success, by the British in 1814. [Foot-note to this letter, in *The Life and Correspondence of President Reed*, p. 134.]

Turning now to their proceedings on the last of August, 1779, it will be well to recall that the old controversy, which the Mason and Dixon line settled, hinged chiefly on the construction of the term "Fortieth degree:" was it a line or a space? If it was a space, then the Pennsylvania line would go far down into Maryland to the 39° line of latitude; but if it was a line, the 40° of latitude, then even the site of Philadelphia would be in Maryland. The Mason-Dixon line was a compromise, in this direction, more favorable to Maryland, because it gave that colony most of that degree, namely, 39° 43' 18". The President of William and Mary, in the absence of accurate surveys concerning the head of the Ohio and Pittsburgh, aimed to get as near Pittsburgh, which, indeed, under the late Lord Dunmore they had actually claimed, and even possessed, seem to have made two proposals: 1. To extend the Mason-Dixon line to the Ohio and, presumably, let that be with the Allegheny or that and a five degree line from the *northern*-most point on the Delaware—which is farther east—be the south and western line of the state. This, considering that Virginia claimed all lands west of Pennsylvania, gave Virginia more of Pennsylvania territory north of the Ohio. A tradition exists that Judge Bryan opposed this, and successfully.<sup>1</sup> 2. The second was also on the basis of the northern-most point five degrees west of the Delaware, a point they so desired to establish, that they offered to divide the 40° space equally west of Maryland to a meridian through that point. "The Virginia gentlemen," says Vice-President Bryan in the above-mentioned letter, of the 31st, "offer to divide exactly the 40th degree with us, which I wish to accept. Mr. Rittenhouse is not averse from my idea," he adds, implying that Professor Ewing, who had aided in settling the Mason-Dixon line, was averse; and no doubt he expresses the latter's idea in his next sentence, when he says: "Perhaps we would be as well off with Mason and Dixon's line continued. Then we should have no further discussion with Maryland"—in which, it appears the Vice-

---

<sup>1</sup>Lecture by Neville B. Craig on *The Controversy Between Pennsylvania and Virginia About the Boundary Line*, p. 23.



Prepared by the author from original sources





President's vote was decisive in this as well as the other, and when they closed the meeting that afternoon the joint commission had so decided: "We [naming the commissioners] do hereby mutually, in behalf of our respective states, ratify and confirm the following agreement, viz: To extend Mason and Dixon's line due west five degrees of longitude, to be computed from the river Delaware, for the southern boundary of Pennsylvania, and that a meridian, drawn from the Western extremity thereof, to the Northern limit of said state, be the Western boundary of said State forever." Vice-President Bryan also had the honor later of leading the Assembly in ratifying this agreement, so that this settlement of the state's boundary was due primarily to him, and the Assembly instructions of April 3rd were carried out in the permanent form that was desired.<sup>1</sup>

The strained relations between Pennsylvania's Supreme Executive Council, above stairs at the State House, and the Congress, in the lower east room, over the Sloop *Active*, needed the most wise and diplomatic care on both sides during the early spring and summer days preceding Vice-President Bryan's Baltimore visit. Financial affairs of state and union were in serious condition during these months, and on April 12th, announcement of more sales of confiscated estates was made. In the vast amount of detail of government and support of the state's part in the war another point came up early in July that was of considerable significance. Two members of the Board of Trustees of the College of Philadelphia at Fourth and Arch Streets had been under suspicion as British sympathizers, and, early in July, the Supreme Executive Council began to consider investigation of that institution and informally notified certain members of the College Board that such was the case, intimating that it might be well not to hold the current commencement. On July 8th the College Board appointed three of their number, Messrs. Willing, Powell and Hopkins informally to notify the President of the Supreme Executive Council that they had passed the commencement, but hoped

---

<sup>1</sup> Vice-President Bryan was absent from Council from August 23 to September 5, 1779, at the time of his Baltimore visit.

purely legal measures would soon be taken according to law, so that they might defend themselves. They also proceeded to secure vacancies in the suspected part of the Board and filled them with John Cadwalader and Lawyer James Wilson, who had recently been selected as counsel for the French government. The choice of Lawyer Wilson, the leader of the Republican Society and chief opponent of the present constitution, was not a very diplomatic move under present conditions; for, was he not the defender of Roberts and Carlisle and other accused Tories? Besides, on the previous May 24th [1779], the rival Constitutional Society, Charles Wilson Peale, the artist, and Astronomer and State Treasurer David Rittenhouse, leaders, had had a meeting on high prices of supplies and concluded Mr. Wilson's friend, Robert Morris, was the leader in raising prices. At an adjourned meeting on July 27th in the State House yard, when General Cadwalader, among other Republicans in attendance, sought to defend Mr. Morris, and about a hundred men with clubs prevented it, the former, General Cadwalader and his friends, went over to the College yard, elected Mr. Morris chairman and, while defending Mr. Morris, pointed to the depreciation of the currency, both state and continental, and stringency in supplies as the general cause of high prices. Lawyer Wilson, Dr. Rush, and six others were appointed to publish an account of the meeting. In view of the fact that all this was supposed to be a part of a fierce campaign to capture the Assembly at the next election, there were serious enough elements in conjunction, about the time Vice-President Bryan was returning from Baltimore, almost to cause revolution and public disorder in Pennsylvania. The most serious part of the situation was the depreciation of the currency and the consequent rise of prices, and the resulting antagonism to all merchants. Many efforts were made to devise some plan to relieve the situation, one of them being a regulation of prices and another a plan of raising money by subscription. Indeed the situation strongly reminds one of the American situation in the summer of 1919 after the great war.

While this turmoil was on, the Assembly was due to meet on the day before Vice-President Bryan completed his boundary work at Baltimore. It was ten days, however, before a quorum was secured, namely, on September 9th [1779]. Of course the financial situation was uppermost and the raising of the \$45,000,000 asked by Congress was appalling. But the event of the day was the message from the Supreme Executive Council, containing recommendations already indicated. First, as to the Proprietary estates: "The experience of mankind," says the Council, of which Vice-President Bryan was so dominant a member, "the practice of other countries and nations, the sentiments of the greatest writers on government, and even our own observation during this great contest, in which the various principles that govern the human mind have been drawn forth into view and action, we think fully demonstrate, that neither the peace, liberty or safety of Pennsylvania can be deemed secure while this powerful interest, attached in all its branches to the powers we have abjured and abandoned, is permitted to retain its full force and influence among us. At present the subject is disentangled from all other considerations of a public nature; should it, by delay, mingle itself with the negotiations of a general peace, we may long lament, and posterity will justly blame our indolence or timidity, which has lost the precious opportunity of rescuing this state from one of the appendages of our former bondage, and placing it on the same level of liberty, interest, tranquility and independence with its sister states."

Then they take up the College of Philadelphia: "The constitution of this state," they proceed, "with a wisdom and foresight which does honor to its framers, having considered the education of youth as a matter of great importance to the interests of society and order of government, we have been led to an enquiry into the nature and government of those institutions which at present subsist. It is with concern we observe a general neglect of this great duty, both in town and country, while the growing attention of other states invites the youth from this, and must pro-

duce effects equally repugnant to public benefit and private convenience. The principal institution in this state, founded on the most free and catholic principles, raised and cherished by the hand of public bounty, appears by its charter to have allied itself so closely to the government of Britain, by making the allegiance of its governors to that state a prerequisite to any official act, that it might have been presumed they would have sought the aid of government for an establishment consistent with the revolution, and conformable to the great changes of policy and government. But, whatever have been the motives, we cannot think the good people of this state can or ought to rest satisfied, or the protection of government be extended to our institution, framed with such manifest attachment to the British government, and conducted with a general inattention to the authority of the state. The influence of a seat of learning upon the peace and good order of a government have, we think, been too fully exemplified in the country from which we have separated, to permit any well regulated state to neglect or overlook it. How far there has been any deviation from the liberal ground of its first establishment, and a pre-eminence given to some societies in prejudice to others equally meritorious, the former enquiries of your honorable house will enable you to determine; for us, it is sufficient to declare, that as learning or science are of no party or sect, we wish to see them promoted on the most liberal principles, giving to every denomination of Christians equal rights and privileges. As corporations compose a species of internal government, in all great changes they have been considered as objects of public attention and care, that their subordination, obedience and support to the supreme and governing powers of the state might be secured and preserved. This is a just and necessary policy, we think worthy of imitation, as the object of the institution, whether civil, religious or charitable, may at the same time remain inviolate."

Again also, among other things, they recur to the freedom of slaves: "Our anxiety to perpetuate and extend the blessings of freedom, and enlarge the circle of humanity, induce us to remind you of the bill for emancipating the

children born of negro and mulatto parents. We wish to see you give the complete sanction of law to this noble and generous purpose, and adorn the annals of Pennsylvania with this bright display of justice and public virtue."

Of these paragraphs of the Supreme Executive Council message, the last two, above, on the College and the negro, seem to have all the ear-marks of Judge Bryan's composition, while the first, on the Proprietary estates, sounds more like the language of President Reed. These two subjects, too, were to appear publicly as among his particular interests. For Vice-President Bryan had a very constructive mind and an intuition for basal principles, quite evident, for example, in his comments on the structure of Baltimore ten days before. To his mind it was inconsistent with professions of and struggle for liberty to hold slavery of a race in the law of the land. As a judge and statesman, he could not see how a charter of a college should not be renewed with the renewal of political institutions, and, no doubt, as a Presbyterian, he viewed the dominance of the Church of England in the College of Philadelphia as an unhealthy condition for a republican state. This was three years before the Episcopalians even considered breaking off from the mother church. Last of all he was a profound politician, and was quite capable of directing strategic movements that would destroy not only the roots, when the trunk of Anglican institutions had been removed, but knew how to strike at the financial and political elements which opposed the old constitution in its new form. Petitions, which had proved so effective in silencing the enemies of this fundamental law, were again utilized to influence action on the Proprietary estates especially. On the next day the two subjects, these estates and the College, were assigned to committees, one member of both, John Smiley, of Lancaster county, being destined to be one of Judge Bryan's most useful supporters. The slave-holders, however, were too powerful for them to show great alacrity in pressing that subject.

On Monday afternoon, September 13 [1779], Vice-President Bryan, Professor Ewing and Mr. Rittenhouse

appeared in the east room and reported in person the results of their negotiations at Baltimore with the Virginia Commissioners, and on the 16th it was referred to a large committee. On the 23rd there came the first test vote on the Proprietary estates in a very full attendance, on the point of calling in ex-Governor John Penn as a witness, and it was voted down 37 to 14, most of the 14 being friends of Lawyer Wilson, one being his brother-in-law, Col. Mark Bird. The bill was ordered published for public consideration.

The Committee on the College and Academy of Philadelphia reported on the 24th of September in favor of re-chartering it as a state institution. A hearing was requested and assigned for Wednesday, the 29th. Meanwhile on Monday, the 27th, the Assembly asked the Council and the Supreme Court to be present on that day and had a long conference with the Council as to the proceedings. The Attorney-General, Mr. Sergeant, was counsel for the state and Messrs. Wilson and Lewis for the College. The hearing lasted during three days; and on Saturday, October 2, 1779, when the first test vote came on the question as to whether the opinion of the Supreme Court members present should be taken, it was decided that that opinion was not needed by a vote of 31 to 18, an almost purely party vote; and when a vote was taken on whether a committee should be appointed to re-charter the institution, it was 33 to 18, the real strength of the Bryan party. Vice-President Bryan was thus guiding the Assembly from a distance, so to speak, and it must have occurred to him that here in the Assembly was a greater field for his services than in the executive; for the Assembly needed his leadership at this time. Ten of the sixteen presented a written protest against the Assembly acting in a judicial capacity and asserting that the action was primarily against persons among the trustees who opposed the constitution of Pennsylvania.

While this action against the College of Philadelphia was being taken on Saturday, October 2nd, the long continued public unrest of the summer and the excitement of the approaching election had finally nerved certain persons

to meet and agree to placard the town on Monday for a meeting on the commons at Tenth and Arch Streets, designed to take matters into the hands of a mixture of militia and mob and deport a number of objectionable persons, especially certain merchants, lawyers and Tories, as all were assumed to be. Indeed some had already been arrested by them and imprisoned awaiting deportation. Dr. James Hutchinson and Charles Wilson Peale, the artist, who had been active in the May meeting, were asked to lead them; and they reluctantly went along in the hopes of dissuading them from any such action. With Lawyer Wilson defending the so-called Tories, the College and the case of the Proprietary estates, it was very easy for them to unite upon him as the chief offender to be marked for deportation, along with his friend Robert Morris. Friends of both gathered at the City Tavern, on Second Street above Walnut, and, when they saw the mob coming down Second went down to Third and Walnut Streets, on the southwest corner of which, opposite the Peters and White residences, was Lawyer Wilson's home. There were then a number of their friends in the house and they had armed themselves prepared for defense. Word was sent to the Assembly at Fifth Street, who in turn notified President Reed, at the executive residence at Sixth and Market streets; the Assembly dispersed, and by mid-afternoon the mob was at the "Fort Wilson," as the residence was afterwards called; and both sides were firing amid several casualties on both sides, when President Reed and the First City Troop arrived and many of the rioters were arrested.<sup>1</sup> On Wednesday, the 5th, the Supreme Executive Council issued a proclamation directing all concerned in the affair both on the street and in the house to surrender themselves to justice.

On October 7, 1779, in the absence of President Reed, Vice-President Bryan presided in the Council room in the upper west room of the State House, as he did also on the 8th, 9th, and 11th, in the first session only of the last mentioned day. On the 8th, he sent a message to the As-

---

<sup>1</sup> For the most complete account of this affair see *The Life and Writings of James Wilson*, by Burton Alva Konkle, Vol. 1, Chap. X.

sembly urging them to supply General Washington's call for 1500 men; on the 9th one proposing a mode of aiding those in the city who were suffering for food; and on the 11th issued a proclamation of embargo on food shipments out of the country, because of the difficulty found in securing supplies sufficient for the fleet of the French allies. These were Vice-President Bryan's last services in that office and this the last day of service. On the 9th the Assembly had voted that, on account of falling prices, that President Reed should have £20,000 for his past year's services, and Vice-President Bryan £10,000, with varying increases for other state officers. The previous day, the 10th of October, in view of the state election on the 12th instant, the Assembly adjourned after recommending to their successors a number of bills, among them the "Act for the gradual abolition of slavery," for vesting the Proprietary estates in the commonwealth, and to alter the charter of the College of Philadelphia and its subordinate schools.

Let it be recalled that had Judge Bryan's election to the Council occurred at the regular time, November 5, 1776, his three-year term would end on that day of the present year; or if the three-years' term dated from his actual election it would run to the 21st of the following February. In any case his term could not extend beyond March 5th next; and, as it was the rule that new elections of both President and Vice-President occurred immediately after the annual election of the Assembly, and also that his successor in Council should be chosen at this election on the next day, these circumstances would have suggested the advisability of his resignation on the 11th, even if it were not already determined that his leadership in the Assembly the coming year was a necessity in the important reorganization of the whole commonwealth that was now about to take place. Therefore Vice-President Bryan offered his resignation that afternoon of the 11th of October, the eve of election, in the following communication to the Council: "I, George Bryan, who for upward of two years last past have held and enjoyed the office of Vice-President of the Supreme



Executive Council of the Commonwealth of Pennsylvania, do, on this eleventh day of October, in the year of our Lord one thousand seven hundred and seventy-nine, resign the said office. As witness my hand. George Bryan." This did not close his service as Councillor, however, for he sat in that capacity on the 12th and the 13th, on the latter of which days, the returns of the previous day's election were read, that elected his successor and also made him a member of the next Assembly, soon to organize in their room across the hall, above the one in which Congress sat.

Judge Bryan was at the close of this period, without question, the most powerful leader of Pennsylvania, in purely state affairs. In a very true sense, as a leader of the Constitutionals, he had determined the constitution of the commonwealth and for three years had guided his party in establishing it, in the midst of the most critical period of the revolution. When that critical period was past and the most able forces of finance, learning and social conservative life had organized to overthrow this constitution, which he deemed the adapted old Lloydean constitution, under which Pennsylvania had prospered for three-quarters of a century, he guided with a steady hand the new ship of state to an even safer anchorage. In these past nearly three years as Vice-President and President, he had had such unqualified confidence reposed in him by his supporters, had been so easily the chief organizer of the executive branch, and so able and industrious an administrator, that even during that greater part of the time when he was not President of Pennsylvania in name, he was so in fact more than either President Wharton or President Reed, the first of whom was principally the military administrator and the second a new convert, whom Judge Bryan had brought into the executive chiefly as a foil to Lawyer James Wilson, the leader of the element opposed to the constitution. In this capacity he had initiated most of the vitally reconstructive legislation brought forward in the Assembly, in which he had seen to it that there was no dominant leader of his party's big majority. The dependence of his party upon him during this period is not so obvious, because what he did through

leaders in the Constitutional Convention was through private personal channels, of which there was no public record; and also because the records of the Executive Council do not indicate these personal activities, as those of the legislative Assembly do, and as those of the next sessions of it were to do so remarkably as to furnish abundant interpretation of all that had gone on before in both his public and private life. He had been a defender of the old constitution during a large part of his quarter of a century as a citizen, and that too against its most powerful enemy, Dr. Franklin; he had interpreted and established the principles of that constitution as a jurist for half of that period; as he had been selected as a jurist in the metropolis of the American shore to interpret it, he had been chosen to defend it in the first attacks upon it by the government of Great Britain. This long defense of it made him the natural leader and organizer of all those who held the old constitution in reverence; and he was as naturally followed in his purpose to secure its preservation in 1776, while fighting a war for its existence. It was, therefore, his hand that had guided its establishment in the past three years, under the new order; and now it was his hand which was to cut out, from under every part of it, the roots of both Proprietary and Royal powers, traditions and usages, and make the old constitution in fact, what its founder, David Lloyd, had often been charged with doing—the constitution of a wholly free people.

## CHAPTER XIV

### THE LEADER AND ORGANIZER OF THE LEGISLATION OF THE ASSEMBLY

1779

The election of October 12, 1779, may be rightly called a "land-slide" for the Constitutionals, led by the ex-Vice-President, Judge Bryan. The city of Philadelphia removed Robert Morris and put Judge Bryan in his place and put the chairman of the Constitutionalist Society, the artist, Charles Wilson Peale, to succeed George Clymer, another Wilson follower. Indeed the city delegation was solidly Constitutionalist, and the rest of the state was so nearly like it that the opposition was insignificant. Judge Bryan's party was in absolute command of the situation. Speaker Bayard was returned, and, although no quorum was secured on the 25th and, indeed, not until the afternoon of Tuesday, November 2, 1779, he was again chosen Speaker and that vigorous, but somewhat erratic patriot-publicist, Thomas Paine, was made Clerk, following in the early footsteps of Benjamin Franklin. The selection of Judge Bryan for the first chairmanship of a committee, namely that to notify the Supreme Executive Council that the Assembly was ready for business, was a key-note appointment from which this Assembly was seldom to depart, as was indicated by his headship of the second one, also, namely, that to take up the recommendations of the previous Assembly. The committee on rules was headed by one of his city colleagues, Mr. Shubart.

Then legislation began, and, as might well have been predicted, the first bill to be called up was Judge Bryan's most beloved project, a bill for the gradual abolition of negro slavery, with himself as chairman, to bring in a new bill. To understand the status of this subject at this time, a

letter from a Philadelphian, whose name is not given in its publication on Christmas day following, in the *Packet*, but who, in all probability was Judge Bryan himself, and written to the pastor of one of the Presbyterian churches in a neighboring county evidently referred to in it,—may throw much light on the subject:

“Philadelphia, December 11, 1779

“Reverend and Dear Sir,

“A bill was brought into the Assembly of Pennsylvania, during the last year, for the gradual abolition of slavery. The benevolence, justice and policy of this design, was, upon publication in the usual manner, much approved by all parties and denominations here; and indeed throughout the State: Whilst it attracted the attention, and invited the imitation of the other United States of America.<sup>1</sup> In fact it gained the applause of the generous and the wise of our new-found nation in every part. From Europe the intention must certainly receive the highest honors; for the friends of America, and of human nature, in that part of the world, are astonished to find that a people so enlightened to their own rights, as we are, should remain blind to the case of the poor Africans whom we hold in servitude; and that, in any age of civilization, great and liberal, such an instance of barbarousness, as slavery, should continue and prevail throughout the settlements, made by the descendants of their common ancestors in America.

“The bill met with little opposition in the House of Assembly. Coinciding with, and exactly pursuing the very first words and the main principles of our Constitution, ‘that all men are born equally free and independent, and that they have certain natural, inherent and unalienable rights,’ a member of the legislature of Pennsylvania must feel himself to be but awkwardly employed in opposing such a design. In short great and general countenance was given to it. But how manifestly soever this bill was founded in equity and the Constitution, yet, as mistake or prejudice

---

<sup>1</sup> Here is further confirmation that the action of Vice-President Bryan in 1777 was imitated by Vermont, and later by Massachusetts.



STATE HOUSE, PHILADELPHIA, IN 1779

From the portrait of M. Gerard by Charles Wilson Peale, at Congress Hall, now first reproduced. (The white cross on the second floor indicates the Assembly room in which Representative Bryan served in 1779-1780.)



might suppose it to have an injurious effect upon a species of property, in which some of our sister States abound, and on which their husbandry greatly dependeth, it was thought prudent that not only our own citizens, but also those of the other United States, should be fully apprized of the benevolent intentions of the friends of the bill. In this view, I suppose the late Assembly forbore to give it the forms of law.

“If we may decide from the general favor the plan has met with, in this place, and the silence of the owners of slaves, in every part of the state except one, the late Assembly had certainly the general consent of their constituents to pass the bill. The exception arises from a memorial against the bill, presented last fall [1779], to the late House, by an inconsiderable number of persons, residing in the western part of your county. Considering how long the bill had lain before the public, the smallness of this opposition is a very considerable circumstance in its favor, and at the same time very honorable to the citizens of the state, who possess slaves within it. It shows that they have carefully considered the foundation of the present resistance to Great Britain, and that they intend to act consistently with the Constituion.

“On this public testimony in favor of abrogating slavery, by a slow, but effectual operation, the present Assembly have resumed it, and, after the usual reading, have directed that it be again published for consideration, by the vote of a decisive majority. Indeed the longer this benign proposal has been contemplated and the oftener it has been brought up to view, the higher advances it makes in public approbation; the few, whose strict regard to their interest, perhaps, prejudices them against so benevolent a design, being ashamed to object. It may be observed that, by the invasion of this state, and the possession that the enemy obtained of this city and neighborhood, great part of the slaves hereabouts were enticed away by the British army. The plan has now obtained such ascendancy over the mind of the public, that, like all useful designs, secure of success, it must take effect; so that if the present Assembly should

decline, from any misapprehension, to erect so splendid a monument to their name, the next will probably be compelled by the general voice.

“You may be assured that in other states, the highest applauses are given to our legislature, upon this occasion. Even in Virginia the people are fully sensible of the weighty hindrances to public strength, morality and industry, which a multitude of slaves introduces: They wish to be able to extricate their state out of these difficulties, and have lately passed laws to restrain and correct in some means the mischief of them. The Eastern states discover a great disposition to relieve the oppressed, and put an end to thralldom. I have no doubt of the immediate concurrence of some of them, for the small number of their bondmen will enable them to do it with less inconvenience. Indeed this æra of founding a new empire in America seems to be designed by Providence for the extinction of so savage a practice, inconsistent with civilization, morality and the true spirit of Christianity.

“In the meantime it is irksome to find, that these few opposers of the bill should generally be members of the Presbyterian Churches, which are otherwise remarkable for their zeal and for their exertion in the cause of freedom. If I could procure a copy of their memorial, I would take notice of everything they have urged, for it is lengthy and argumentative. But the piece is not to be found among the public papers, since the Assembly rose. [In October.] The Clerk supposes that some friend of the signers hath withdrawn it. To such parts of it, however, as I can recollect, I intend to reply.

“First, then, these objectors set up the right of the master to the offspring of his female slaves, upon the allowance of Moses to the Israelites, *Leviticus* xxv, 46, to purchase bondmen of their heathen neighbors, and to buy the children of strangers living among them, and to hold these and their posterity forever as an inheritance: which goes much farther than the case of captives, taken in war, and their children.

“On this I would observe that Moses legislated for a



people in a very low and debased state of society, who, having been themselves in bondage in Egypt, were fully habituated to the practice of slavery; a people grossly ignorant and besotted with the usages and superstitions of the country from which they had been just delivered; a people now taken under the dominion of the Almighty, as their earthly King, and secluded from intercourse and commerce with the rest of the world, for great and extraordinary purposes to be accomplished in His own time. It is manifest that laws and regulations, backed and aided by a succession of miracles, if properly adapted to the circumstances of such a people, and to attempt them to the divine will and purpose, must be of a nature unsuitable to any other nation.

“A great man of our time, Montesquieu, on this subject says, that ‘Solon being asked if the laws he had given to the Athenians were the best?’ He replied, ‘I have given them the best they were able to bear:’—a fine expression, that ought to be perfectly understood by all legislators. When Divine Wisdom said to the Jews: ‘I have given you precepts, which are not good,’ *Ezekiel* xx, 25, this signified that they had only a relative goodness; which is the sponge that wipes out all the difficulties that are to be found in the law of Moses. *Spirit of Laws*, Vol. 1, 435. In fact we can in no other manner reconcile many of his statutes to the perfections of God, than by supposing, they were made in accommodation to the habits of the nation to which he delivered them, and to the circumstances and usages of the country and time, in which this very extraordinary Republic flourished. Learned men have judged, that some of his ordinances were contrived to counteract the superstitions and abominations of Egypt, and to preserve this select people from the idolatry of their neighbors: to which, it appears, they were remarkably prone. The low state of society and improvement, in which Moses found them, certainly occasioned the establishment of the cities of refuge, for the innocent manslayer to flee to from the avenger of blood; for the rude method of punishing murder, hereby countenanced, never subsisted, unless among barbarians or

savages; accordingly we find it in full vigor among our Indian neighbors. The law of war, *Deut.* xx, 13, 'to put all the males to the edge of the sword,' could be exercised only by a very uncivilized nation. We are assured, by the highest authority, that the law of divorce, in the Jewish code, wrong in its nature, was indulged to the hardness of their hearts. And not to multiply instances: polygamy must have been regulated by Moses (for, as he acknowledges two wives, he doth not forbid it), from the same motives. *Deut.* xxi, 15, 16, 17,—'If a man have two wives, one beloved and another hated,' that is, one preferred to the other, 'and they have borne him children—if the first born be hers that was hated, that he may not make the son of the beloved, first born, before the son of the hated, which is indeed first born.' Had Moses intended to determine the birth-right on the Christian law of one wife, he would have used other words. The priority of marriage would have afforded a very simple rule; or rather, he was wrong to speak of another wife, whose son was, however, to be preferred. Yet, as we find, that more male infants are born than female, it must be contrary to equity and nature, that any man should indulge himself in a plurality of wives.

"Nothing can be wilder than to draw examples from the law of Moses into our policy and jurisprudence, whose government rests wholly on compact and human authority, and whose customs, habits and state of civilization differ in every respect from the state of the Israelites, at their exodus from the bondage." He proceeds to show how Christian princes have wrought havoc by so doing, and to what absurdities it led them. The Memorialists made much of the point that Christ was silent on slavery; and he answers this with his usual patience and learning, pointing to the "golden rule" and the Apostles' actual teachings against it. Judge Bryan sought unanimity for the first abolition act like his great antagonist, James Wilson, fought for unanimity of the people of the United States in declaring independence.

It will be remembered that, when Judge Bryan's bill was offered to the previous Assembly they were sensitive

on the subject of a bill originating from the outside and, although adopting the general principle of gradual abolition and his main ideas, made a bill of their own in their own language. Judge Bryan now produced his own bill and in his own language:<sup>1</sup>

“When we contemplate our abhorrence of that condition to which the arms and tyranny of Great Britain were exerted to reduce us,” the preamble of the bill begins, “when we look back on the variety of dangers to which we have been exposed, and how miraculously our wants in many instances have been supplied and our deliverances wrought, when even hope and human fortitude have become unequal to the conflict, we are unavoidably led to a serious and grateful sense of the manifold blessings which we have undeservedly received from the hand of that Being from whom every good and perfect gift cometh. Impressed with these ideas, we conceive that it is our duty, and we rejoice that it is in our power, to extend a portion of that freedom to others, which hath been extended to us, and a release from that state of thralldom, to which we ourselves were tyrannically doomed, and from which we have now every prospect of being delivered. It is not for us to enquire why, in the creation of mankind, the inhabitants of the several parts of the earth were distinguished by a difference in feature or complexion. It is sufficient to know that all are the work of an Almighty hand. We find in the distribution of the human species that the most fertile as well as the most barren parts of the earth are inhabited by men of complexions different from ours and from each other, from whence we may reasonably, as well as religiously infer, that He, who placed them in their various situations, hath extended equally His care and protection to all, and that it becometh not us to counteract His mercies:

“We esteem it a peculiar blessing granted to us, that we

---

<sup>1</sup> Professor E. R. Turner, in his volume on *The Negro in Pennsylvania*, page 78, makes the mistake of thinking the same people worked on the first bill, which was not adopted, and the second bill which was Judge Bryan's own bill, and so modified their ideas. The facts are that Judge Bryan's originally proposed bill was not used on account of the sensitiveness of that assembly, and now, in a wholly new assembly, Judge Bryan used his own bill, which was adopted.

are enabled this day to add one more step to universal civilization by removing as much as possible the sorrows of those who have lived in undeserved bondage, and from which by the assumed authority of the Kings of Great Britain, no effectual legal relief could be obtained. Weaned by a long course of experience from those narrow prejudices and partialities we had imbibed, we find our hearts enlarged with kindness and benovolence towards men of all conditions and nations, and we conceive ourselves at this particular period extraordinarily called upon, by the blessings which we have received, to manifest the sincerity of our profession and to give substantial proof of our gratitude :

“And whereas the condition of those persons, who have heretofore been denominated negro and mulatto slaves, has been attended with circumstances which not only deprived them of the common blessings that they were by nature entitled to, but has cast them into the deepest afflictions by an unnatural separation and sale of husband and wife from each other, and from their children, an injury the greatness of which can only be conceived by supposing that we were in the same unhappy case. In justice, therefore, to persons so unhappily circumstanced, and who, having no prospect before them whereon they may rest their sorrows and their hopes, have no reasonable inducement to render that service to society which they otherwise might, and also in grateful commemoration of our own happy deliverance from that state of unconditional submission to which we were doomed by the tyranny of Britain :

“Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, that all persons, as well negroes and mulattoes as others who shall be born within this state, from and after the passing of this act, shall not be deemed and considered as servants for life or slaves; and that all servitude for life or slavery of children in consequence of the slavery of their mothers, in the case of all children born within this state from and after the passing of this act as aforesaid shall be

and hereby is utterly taken away, extinguished and forever abolished."<sup>1</sup>

Several provisions followed: These children were to be servants until twenty-eight years of age, like those persons bound by indenture; making them citizens in every respect afterwards; that registry must be made of all negroes and others held as slaves by November 1, 1780, and several other readjusting negro laws, exempting negroes owned outside the state for six months, nullifying all servitude agreements of over seven years, and repealing conflicting laws. The act was passed on March 1, 1780, by a vote of 34 to 21, the 21 being distributed throughout all the counties, the only one voting wholly against it being Westmoreland.<sup>2</sup> Judge Bryan's own city went solidly for it, although the county did not. Those who voted for it are as follows: I. Philadelphia city: 1. George Bryan; 2. William Hollingshead; 3. Jacob Shreiner; 4. Michael Shubart; 5. Charles Wilson Peale. II. Philadelphia county: 1. Robert Knox; 2. Joseph McClean; 3. Edward Heaton; 4. William Coates. III. Bucks county: 1. Gerardus Wynkoop; 2. Benjamin Fell; 3. William Scott; 4. Joseph Savage. IV. Chester county: 1. David Thomas; 2. Henry Hayes; 3. John Fulton. V. Lancaster: 1. John Smiley; 2. John Gilchrist; 3. William Brown, Sr. VI. York: 1. David Dunwoody; 2. Matthew Dill; 3. John Orr. VII. Cumberland county: 1. Jonathan Hoge; 2. Abraham Smith; 3. John Harris; 4. Frederick Watts; 5. Ephraim Steele. VIII. Berks: 1. Jonathan Jones [this county also went against it]. IX. Northampton: 1. Peter Rhoads; 2. John Ralston. [This county gave a majority against it also.] X. Bedford: 1. John Bond; 2. Joseph Powell. XI. Northumberland: 1. Samuel Dale; 2. William Montgomery.<sup>3</sup>

At the opening of the revolution there were about 6000

<sup>1</sup> X *Statutes at large of Pennsylvania*, 67. Also *Pa. Packet* of Dec. 23, 1779.

<sup>2</sup> Two more, absent ones, joined, making 24 dissentients, who entered their reasons in the journal, their idea being that it was dangerous to do this in time of war, that it might effect the institution disastrously in other states, and that the bill should not have done more than give them freedom, not equality and franchise, the same status as everybody else. The vote of Feb. 15, 1780, on it was 40 to 18, so that the variation was probably due to absences. It was essentially the same in each vote.

<sup>3</sup> The law was reported as sealed on March 25, 1780.

slaves in Pennsylvania. Ten years after this bill was passed, at the first federal census, there were less than 4000; and within a decade more these were diminished by more than half; and by still another decade there were only a few hundred scattered throughout the state, and these were the aged ones that only death was expected to free—and finally did. This was the way the author of abolition of slavery in Pennsylvania, Judge Bryan, expected it to work out, but he had more than one occasion to defend the law and show faith in its wisdom, even against more extreme abolitionists themselves. In 1808, the first absolute freedom under this act became effective, therefore, and, by a curious coincidence, it was the same year in which, by a national compromise, the subject of abolition could be acted upon by the union. "Our bill," wrote Judge Bryan to Samuel Adams, "astonishes and pleases the Quakers. They looked for no such benevolent issue of our new government, exercised by Presbyterians."<sup>1</sup> Pennsylvania, through Judge Bryan, thus "led the way," says Bancroft, "to freedom for all." So it was that George Bryan became the father of legal emancipation in America, under the influence of our great revolution for national independence; and his name deserves to stand beside that of the great finisher of emancipation of that race, Abraham Lincoln.<sup>2</sup>

Judge Bryan was this only in future possibility and faith on the day he was made chairman of the committee to bring in the bill, a point to which this narrative must now return, namely, Wednesday, November 3, 1779. This was the fourth committee appointed, the chairmanships of three of which were held by Judge Bryan. The fifth committee, that on militia legislation, was headed by Judge Bryan's chief lieutenant, the artist and head of the Constitutional Society, Charles Wilson Peale. The sixth was on the great reconstruction bill, in some respects the most important committee of them all, that to vest the Proprietary estates in

---

<sup>1</sup> *History of the U. S.* by Bancroft. Vol. V, p. 413.

<sup>2</sup> Massachusetts had much the same difficulty with this subject in trying to get it through the "free and equal" clause, as did Vermont. Her constitution was ratified in June, 1780, about three months after the Pennsylvania act was passed; but it was 1783, through a decision of the Supreme Court of that state, before it was legally decided.

and the like.

---

P H I L A D E L P H I A :

An ACT for the gradual abolition of Slavery.

**W**HEN we contemplate our abhorrence of that condition to which the arms and tyranny of Great-Britain were exerted to reduce us; when we look back on the variety of dangers to which we have been exposed, and how miraculously our wants in many instances have been supplied, and our deliverances wrought; when even hope and human fortitude have become unequal to the conflict; we are unavoidably led to a serious and grateful sense of the manifold blessings which we have undesignedly received from the hand of that Being from whom every good and perfect gift cometh. Impressed with these ideas, we conceive that it is our duty, and we rejoice that it is in our power, to extend a portion of that freedom to others, which hath been extended to us; and a release from that state of thralldom, to which we ourselves were tyrannically doomed, and from which we have now every prospect of being delivered. It is not for us to inquire, why, in the creation of mankind, the inhabitants of the several parts of the earth were distinguished by a difference in feature or complexion. It is sufficient to know that all are the work of an Almighty hand. We find in the distribution of the human species, that the most fertile as well as the most barren parts of the earth are inhabited by men of complexions different from ours, and from each other, from whence we may reasonably as well as religiously infer, that He, who placed them in their various situations, hath extended equally His care and protection to all, and that it becometh not us to counteract His mercies. We esteem it a peculiar blessing granted to us, that we are enabled this day to add one more step to universal civilization, by removing as much as possible, the sorrows of those who have lived in undeserved bondage, and from which, by the assumed authority of the Kings of Britain, no effectual legal relief could be obtained. Weaned by a long course of experience from those narrow prejudices and partialities we had imbibed, we find our hearts enlarged with kindness and benevolence towards men of all conditions and nations; and we conceive ourselves at this particular period extraordinarily called upon by the blessings which we have received, to manifest the

First publication of The Abolition Act of 1780, after it became a law,  
in *The Pennsylvania Packet* of March 30, 1780





the commonwealth of Pennsylvania; and of this also Judge Bryan was made chairman; indeed it had been his measure almost as much as the bill for gradual abolition of slavery; and it involved even more skillful legal reconstructive work than the former bill. It had of course been under consideration by Judge Bryan for some time, so that he was ready with a prepared bill in six days, introducing it on November 9th, and pressing it forward with such dispatch, that the second reading occurred the next day, with an order for publication, a hearing was had, and in two weeks from the time it was introduced, November 24, 1779, a vote on engrossing it in order to pass into a law was taken, with the overwhelming majority of 40 to 7. The seven, even, appeared to object only to some of the characteristics of the bill, claiming that it had a retrospective power back of July 4, 1776, that might endanger titles; also endanger titles for sales since then; seemed to discriminate between the Proprietaries and other citizens; and was not fair in appearing to pay the Proprietaries from money already their own. It was enacted into a law three days later, November 27, 1779, against the protest of ex-Governor John Penn that they could not deprive the Proprietaries of their property without their consent.

This law is generally known as the Divesting Act and, of course, applied only to Pennsylvania, not Delaware estates. This compensation to the Proprietaries was £130,000, sterling, something like three-quarters of a million dollars, payable in installments after one year; and as the family accepted the money, they thereafter only laid claim to private estates, including manors laid out before July 4, 1779, which were exempted by the act. "But no such act of generosity—honesty it might be called," wrote an attorney for the Penn family of later date, the late Col. William Brooke Rawle,—“as the payment to the Penns of some compensation for the loss of their estates in the Three Lower Counties upon Delaware can be credited to the State of Delaware, as they came to be called, and consequently there was no estoppel as to them”—which shows the opinion of Judge Bryan's work held by the American representative of

the family in our own day. One interesting feature was that quit-rents were abolished; and, in the preamble, it was stated that the new lands of other states were drawing off large numbers of the Pennsylvania population because these lands were not available on the same terms. It will therefore be seen what a tremendously significant act this was, and yet it was no different—except far more generous—than the losses of the British government of the whole land, the price of war and defeat. The Proprietaries were thus wiped off the map of the new commonwealth, just as the British government itself was; and, it took on new significance as the last step, in the long series that began with the colony, and was added to by David Lloyd and clung to by George Bryan and, as he believed, rendered permanent in the new form of the old constitution, and ended in absolute freedom from all extraneous power.

This was what Judge Bryan aimed at on that November morning, the 3rd, the second day of the new session, when he became chairman of this sixth committee—all of them, indeed, but one. Following this appointment, Judge Bryan was also put at the head of the seventh committee, namely, that to confirm and re-charter the College of Philadelphia and its subordinate schools at Fourth and Arch Streets. Just one week later he brought in a bill for this purpose also; and it, too, was pressed forward with his industrious dispatch, so that papers of the College trustees were ordered before the House on the 12th, the second reading occurred that afternoon, and was ordered published on the 16th of November. They found a tenacious opponent in the Provost, Dr. William Smith, who, on the 22nd, asked for a hearing by counsel, and on the 23rd presented a paper of his own. These were dismissed, after consideration, on the 25th and a vote taken, resulting in a like party majority, 39 to 5, one of the five registering his dissent on the ground of haste in so important a public matter. It was passed, engrossed and signed on November 27, 1779.

The title of the bill was "An Act to Confirm the Estates and Interests of the College, Academy and Charitable School of the City of Philadelphia, and to Amend and Alter

the Charters Thereof conformably to the Revolution and to the Constitution and Government of this Commonwealth, and to Erect the Same Into a University." The preamble expresses the danger to the republic of an institution of learning in the hands of "disaffected men," and holds that the catholic character of the institution was destroyed by a by-law of June 14, 1764. They therefore declare the old charters void, and then proceed to re-establish the whole on a new foundation. First they empowered the state executive to set aside confiscated estates for its support, the annual income not to exceed £1500, "computing wheat at the rate of ten shillings per bushel," the board of trustees and faculty were vacated, and the trust was to repose in: 1. The President or Chief Executive; 2. The Vice-President; 3. Speaker of the Assembly; 4. The Chief Justice; 5. Judge of Admiralty; 6. Attorney-General; 7. Senior Episcopal minister; 8. senior Presbyterian minister; 9. Baptist also; 10. Lutheran; 11. German Calvinistic churches also; and 12. Roman church; 13. Dr. Benj. Franklin; 14. Congressional delegates Wm. Shippen, Frederick Muhlenberg, and James Searles; 15. Justices Wm. Aug. Atlee and John Evans of the Supreme Court; 16. Secretary of the Executive Council, T. Matlack; 17. State Treasurer David Rittenhouse; 18. Jonathan Bayard Smith; 19. Samuel Morris, Sr.; 20. Judge George Bryan; 21. Dr. Thomas Bond; and 22. Dr. James Hutchinson—and their successors, "Trustees of The University of Pennsylvania." The only other University office they could accept was that of Treasurer, and Judge Bryan became the first incumbent of that office. The Assembly was to have veto power over any choice of a trustee in future, and the new oath of office was to be that provided by constitution and laws, and all rules and arrangements were to be made consistent with the new order. The trustees, of whom seven were to be a quorum, were to meet on the first Wednesday in the following month, December, 1779, for organization. The re-organization was to occur within a month of the introduction of the bill.

The act was published on Tuesday, November 30, 1779, and, as the following day was the first Wednesday in De-

ember, the new trustees were directed to meet at the Library room of the State House, above stairs, at 11 o'clock and go from there to the "Hall of the University," heretofore known as College Hall, at Fourth and Arch Streets. Eighteen of them did so and elected President Reed President of the board, which was already assumed, and after a merely preliminary meeting they adjourned to meet on Friday, at 6 o'clock at the State House Library room, up stairs, again. They decided, however, that the schools of the collegiate department should open immediately and proceed as usual. The Assembly Library room proved to be a favorite meeting place for the board of the new University. Judge Bryan was of course there and at the next meeting, on December 3, 1779, was elected Treasurer by all votes except his own, and became one of the committee on reorganization. He was authorized to receive all of the papers of the late Treasurer of the College, George Clymer; and on the 8th was put on the financial committee for faculty funds. The University had in it, besides the Medical School students, 15 boys in the higher studies taught by Provost and Vice-Provost, 63 boys in the Grammer School, 63 in the English School and 54 in the Charity School, a total of 195. On December 16th, Judge Bryan's pastor, the Rev. Dr. John Ewing was chosen Vice-Provost and Professor of "Natural and Experimental Philosophy" and Mr. Rittenhouse, Professor of Astronomy, the mathematics of higher grade to be divided between them. This could have meant but one thing, namely, that some possibility existed of retaining the old Provost, Dr. William Smith, but at the next meeting on the 21st Dr. Ewing declined the Vice-Provostship. Judge Bryan, on the 29th, was made chairman of a committee to get possession of the Provost's house at the corner of Fourth and Arch Streets for use as University offices; and, in his office of Treasurer, it was his duty to see that a supply of wood from the confiscated estates was on hand to keep the young ideas warm. Most of these winter meetings were held in the Council Chamber. By January 26, 1780, a Rector of the Academy was chosen and some other members of the faculty, and a surprising amount of favor was shown to German pupils.

On January 31, 1780, they were compelled to get a loan from the Assembly of £15,000 for current expenses, Judge Bryan being on nearly all the financial committees. At this meeting also they made Dr. Ewing Provost and voted to call back to the Mastership of the English School, Judge Bryan's Convention lieutenant, Professor James Cannon, who had gone to Charleston, South Carolina. Professor Rittenhouse was made Vice-Provost at the meeting on February 8th and Dr. Ewing officially accepted the Provostship on the 26th. By April 5th, the incorrigibility of the late Provost, Dr. Smith, became so acute that Judge Bryan and Mr. Matlack were made attorneys for the University to bring him to time. They secured the house and rented it to Vice-President Moore. Professor Cannon arrived in May. After some delay, it was finally decided that commencement should occur on the 4th of July, and one of the features of that day was the honoring of the famous author of *Common Sense* and the *Crisis*, Thomas Paine, now Clerk of the Assembly. It is significant, too, that on this day the Trustees called upon Judge Bryan to assist in revising all the old rules and regulations of the institution, so highly was his ability as a reorganizer looked upon by his associates, for by this time, as shall appear, he had reorganized the whole government of the commonwealth. As the institution was now reorganized and had its first commencement, but was to have a most picturesque experience in the next decade, during which Judge Bryan was connected with it, it may be well to defer further anticipation of the narrative and return to that day on November 3, 1779, the second day of the session of the new Assembly, when he was made chairman of a committee to secure these results.

It will be recalled that this was the seventh committee appointed by the new Assembly and that he was chairman of six of them, before the second day was done. The eighth committee, was on bounty to the militia, not an important one, but notable because Judge Bryan was not on it. The ninth one, however, that on forming a civil list or fee bill of all officers, had him as chairman, and he was also chairman of that to inspect and reform the Pennsylvania Hospital

—chairman of eight out of ten committees in the first two days of the session. No one had any doubts, by this time, who was acknowledged as the not only unquestioned leader of the Assembly, but almost the sole leader, to a degree remarkable in legislative annals. Two other committees were appointed that day, one on rewards for Pennsylvania troops, of which his lieutenant, Charles Wilson Peale, was chairman, and one to bring in a bill to suppress vendues, the twelfth committee, of nine of which, Judge Bryan held the chairmanships—a very large two days' work.

The 4th of November, 1779, added but one more chairmanship to his collection, that on the Sloop *Active* case and the Wyoming Connecticut claims, reported from their Congressional delegates. Friday, the 5th, did slightly better, namely, two chairmanships were added to his list, one on the minutes of Assembly and one conference with the Council for election of President and Vice-President—eleven out of fourteen chairmanships in four days, and all of the first importance. Monday, the 7th, did still better, in creating four committees, whose chairmanships were divided between Judge Bryan and Mr. Peale, the former receiving those on the sale of a state ship, *General Greene*, and that on inspection of accounts, requested by state auditors, because the situation was so difficult, Mr. Peale being assigned to those on chimney sweepers and a stable for members' horses. Here were thirteen out of eighteen committees in the first week! This shows the remarkable character of his leadership, not only in this Assembly, but in every other public work with which he had been connected for nearly twenty years. It became natural to speak of him as Mr. Bryan or as George Bryan, rather than Judge, for his newer activities were so much more striking and public as to submerge his old title. He was a bigger man than any position he might hold, and he certainly was the chief leader of the new democracy, while so many of the upper classes had become discredited and disqualified for leadership by pacifist or Tory tendencies, or their leadership was transferred to diplomatic, Congressional or military spheres.

By Tuesday, November 9, 1780, the beginning of the

second week of the Assembly, some of these committees began to report, some of Mr. Bryan's among them. Two new committees were appointed on this day, one of which on the petition of a military officer, Mr. Bryan was made chairman; the other was on relief for the poor, and assigned to Mr. Wynkoop. The 10th, Wednesday, was spent in receiving some of Dr. Bryan's committees reports, but of the three new committees appointed, one, that on vesting the State House, public barracks, court houses, "gaols," work-houses, etc., in the commonwealth, was assigned to his chairmanship, one of the other two, that on grievances, being assigned to Mr. Peale. The next day being devoted to Presidential election and attendance on a funeral of a Congressman, Joseph Hewes of North Carolina, little new business came up; but on Friday, the 12th, another most important part of re-construction came up, namely, the erection of a Court of Errors and Appeals, to take the place of appeal to the King in Council, and as a court of review, since the Supreme Court had original jurisdiction in some cases. Mr. Bryan was of course made chairman of this committee, with but two other members. This made sixteen out of twenty-four committees—two-thirds of all in number and nine-tenths in importance! The mind of the modern recurs easily to a well-known and somewhat similar case in national and international affairs. No new committees appeared on Saturday, the 13th, but on Monday the papers from Congress regarding financial affairs and a proposed inter-state convention of all states north of Virginia, inclusive, to take measures for the regulation of rising prices called for a new and most important committee to report upon it and it had now become a foregone conclusion that Mr. Bryan should be chairman of it.

The third week of the session began on Tuesday, November 16, 1779. Once in a while a member would bring in a bill independently, but not more than three or four had thus far been brought in. This day was given over chiefly to discussions of bills brought in by Mr. Bryan's committees, and one committee on re-imbusement for individual losses caused by Continental troops was appointed, the ninth

one of which he was not chairman. The 17th, Wednesday, was also largely given over to reports of his committees, and their treatment was characterized by as much dispatch as that of the committees themselves. The Assembly went down stairs also to attend the Congressional reception of Chevalier de Luzerne, the new French Minister. On Thursday, the 18th, consideration of his committees reports again occupied most attention, and it was on this day that Mr. Bryan's committee proposed to Connecticut the submission of the Wyoming question to a Congressional Committee of Appeals, as suggested in the proposed articles of Confederation, and to be binding on the two states as if the Articles were in force. His committee also approved the inter-state convention. One new committee was appointed also, namely, one to bring in a bill for a United States quota of \$2,300,000 per month for the year 1780, and, in this case also, Mr. Bryan headed a large committee. This was the day when a decisive vote was taken on the work of his first committee, that on the Abolition act, and the ratification of his work on the Virginia boundary. The next day, the 20th, his quota bill was reported and another new committee chairmanship, that on impeachment of two Northumberland county judges, was assigned to him. On Monday, 22nd November, 1779, when the Assembly elected delegates to the inter-state convention on regulation of prices, Speaker Bayard, Mr. Bryan, John Jacobs, John Bull and William Henry were chosen. This was a species of committee, of which only the official position of Speaker Bayard prevented Mr. Bryan from being the head also, and, as in the case of the Stamp Act Congress, it may well be taken for granted that he was the essential head in activity. If this three weeks' work of the session does not record twenty-nine committees, of twenty of which he was chairman or, as in this case, essentially chairman, it came so near it as to be inconsequential.

With the opening of the fourth week of the Assembly on Tuesday, November 23, 1779, still more of Mr. Bryan's measures were reported out or considered, among them a direction for the Sloop *Active* prize money to the Pennsyl-



vanians as the Admiralty Court had directed. Of two more new committees, one concerning a bridge over the Schuylkill was assigned to Mr. Bryan's chairmanship, and the others to Mr. Smiley, that on the Dr. Morgan-Dr. Shippen dispute. The High Court of Errors and Appeals bill was reported by Mr. Bryan also. The next day, the 24th, was the day of the vote on the Proprietary estates; and the 25th that on College of Philadelphia and the United States financial bill, and others. Friday, the 26th, brought out another new committee that designed to equalize military burdens between those who supported the war voluntarily and pacifists and Tories who did not, and the chairmanship of this one went to the big leader. It was a very full day. Saturday, the 27th, the last day of the session, was a red-letter day for enactments and order for publication, the former including the College bill, the Proprietary estates bill, the equal burden bill, and some lesser ones. Four new committees were formed, the chairmanship of three of them being assigned to the Philadelphia leader, Mr. Bryan; these were one on delinquent accounts, repair of the Assembly room, and the erection of a land office, a natural outgrowth of the estates act, the fourth being merely to see the seal put upon the nine acts passed at this session, of less than four weeks. Mr. Bryan also reported the Northumberland impeachment articles.

The adjournment of this first session on November 27, 1779, was to January 19, 1780, three weeks later, after the holidays. Such a session of a legislature was probably never duplicated, before or since, in the matter of dominance of one man. The chairmanships of twenty-five out of the whole thirty-six committees of the session, with membership in a twenty-sixth in which it would be difficult to think of him as subordinate, is the remarkable proposition of over two-thirds of the chairmanships of the Assembly of Pennsylvania, in numbers, and, as has been said, nine-tenths in importance. As all power was practically concentrated in this body, and he was its almost sole leader by overwhelming majority of the people, Mr. Bryan's well-known modesty only need have prevented him from saying with the great French King: "*L'etat, c'est moi!*"

CHAPTER XV  
LEADER AND ORGANIZER OF THE LEGISLATION  
OF THE ASSEMBLY

II

1780

The second session of the Assembly of 1779-1780 did not begin in the eastern up-stairs room at the State House on Wednesday, because of a lack of quorum, and indeed were unable to secure one until the following Monday, January 24, 1780. And the first action after credentials of new members was the appointment by speaker Bayard of the thirty-seventh committee of this Assembly, composed of Judge Bryan and Mr. Peale—the twenty-sixth one for the former to head, to confer with the Executive Council in the west upper room across the hall.<sup>1</sup>

On Tuesday the 25th, the inter-state convention committee reported that they had met on January 5th in Philadelphia and adjourned from time to time until the 21st, in hopes that the delegations from Massachusetts, Rhode Island, New York and Virginia would arrive, but as they did not, it was deemed of no use to proceed. After this report, which was signed by Speaker Bayard, Mr. Bryan and the two others, amongst other business, three more committees were appointed, making forty, of which two were assigned to Mr. Bryan as chairman, one being to bring in a bill establishing Admiralty jurisdiction of Pennsylvania, and the other a bill for the recovery of fines and forfeitures due the commonwealth, the third being one to consider the accounts report for 1779.

On the 26th, a committee of the whole, with Mr. Bryan

---

<sup>1</sup> It is well to recall that at this time the east upper room was then of the same dimensions as the Congressional Hall below it.

as chairman, considered the militia bill, in both forenoon and afternoon sessions. The forty-second committee, a general reference one, was the thirteenth one only that Mr. Bryan was not the head of, Mr. Hollingshead, one of his fellows from Philadelphia, being appointed. The reference committee reported the next day causing the assignment of its various subjects to other new committees, two out of three of which, had Mr. Bryan as chairman and the third had Mr. Peale: these were a conference committee to meet both the State Executive Council and the Congress; one to provide a bill confirming to Frenchmen the same privileges in this state that the French Treaty gave to Americans in France; and the third, Mr. Peale's, was consideration of some disputes that had arisen in the final location of the Virginia boundary. This gave Mr. Bryan thirty-one out of the whole forty-five committees.

On Friday, the 28th of January, 1780, the committee of the whole was presided over by Mr. Peale; and on Saturday, when it was found that delegates from Massachusetts and Rhode Island had at last appeared for the inter-state convention, Vice-President Moore was put in Mr. Bryan's place on a new committee. The Sloop *Active* case now again required a Pennsylvania-Congressional conference and Mr. Bryan was made chairman of a committee to formulate instructions to the states delegates for the conference. These were brought in on Monday, the 31st of January, 1780, and considered in committee of the whole of which also Mr. Bryan was chairman. It was a serious crisis in the *Active* case, for Congress proposed to pay Olmsted and his companions and charge the same to Pennsylvania—a mode of coercion. As this was the most critical point in the legal phase of this great case, and as Judge Bryan wrote these instructions, which have never received proper consideration in any account of the case, it may be well to let Judge Bryan state his own case, as they stand in the words of these instructions then reported:

“Gentlemen—

“The house being informed that it has been proposed in the honorable Congress, that an order be drawn on the

treasury of the United States, for the amount of three-fourths of the neat<sup>1</sup> proceeds of the Sloop *Active* and her cargo and to pay the same to Gideon Olmsted and others, appellants in that case, in order to satisfy the decree of the Court of Appeals for prizes made at sea, and that the same be charged to the State of Pennsylvania, referring said state for indemnification to the three-fourths in the hands of the Judge of Admiralty of Pennsylvania.

"The house in consequence of the above, have taken the premises into their most serious consideration, and adopted the instructions given by the last house of Assembly, to a committee of the said house, who had been appointed to confer with a committee of Congress in the case of the Sloop *Active*, which instructions are in the following words:

*"Resolved 1st, That 'The power of establishing courts for receiving, and determining finally appeals in all cases of captures,' is reserved in Congress, by the articles of Confederation; and as the State of Pennsylvania has acceded to these Articles, this house esteem it their duty to adopt such regulations, consistent with the principles of the Confederation, as Congress may judge necessary for the due exercise of the said power.*

*"Resolved 2nd, That our act of this commonwealth, for establishing a court of Admiralty, it is declared and enacted, that the finding of the jury shall establish the facts without re-examination or appeal, and that the act is not repugnant to, but consistent with the resolutions of Congress of the 25th of November, 1775.*

*"Resolved 3rd, That the proceedings in the court of Admiralty, in the case of the Sloop *Active*, were founded upon the aforesaid act of Assembly, which, together with the said resolve, form the true ground whereupon the decision of the contested point should be made, without involving a consideration of the necessity or propriety of future alterations."<sup>2</sup>*

"The house likewise instruct you immediately to inform the honorable body, of which you are members, that this

<sup>1</sup> Old style for "net." Olmsted is spelled "Umstead."

<sup>2</sup> These three *Italicized* resolves only were not written by Mr. Bryan.

house will consider any application of the money of this state by Congress, to the purpose aforesaid, as an high infringement on the honor and rights of the commonwealth of Pennsylvania, and in this view will complain in an especial manner, of those delegations which shall concur in any vote for that purpose, to the several legislative bodies from whom they respectively derive their powers.

“And you are further instructed, to enter a protest in behalf of this state, that we will pay no part of the sum which Congress shall award out of the treasury of the United States, in consequence of the decree of the Court of Appeals.

“We also instruct you to inform Congress, that the manifest right of the citizens of this state to the benefit of its laws, has sometime since obtained, from the authority thereof, an order for the distribution of the three-fourths, given by the verdict of the jury in this case, to the captains and crews of the brigantine *Convention*, and her consort.

“The house views with astonishment the perseverance and decision of Congress, in rolling upon this state an embarrassment created by the Court of Appeals.

“Congress recommended a trial by jury to be introduced into the court of Admiralty: The Assembly of Pennsylvania adopted the measure. A jury in the case of the sloop *Active* founded their verdict upon the facts. It is the proper business and the strict right of juries to establish facts: yet the Court of Appeals took upon them to violate this essential part of jury trial, and, to reduce in effect, this mode of jurisprudence to the course of the civil law, a proceeding to which the state of Pennsylvania cannot yield.

“If the mode of trial by jury (in cases of capture), as recommended by Congress, is found inconvenient to the circumstances of the United States, as being a mode unknown to most of the civilized states in Europe, this house is desirous of conforming to the customary practice.

“The house finally remind you of the laws which they understand here have been passed in some of the states of the union, denying all appeal in law, as well as fact, to

the Court of Appeals established by Congress for prize causes, except the claimants be foreigners or captors in the pay of Congress;—by the operation of one of which laws, Mr. Hugh McCulloch, a citizen of Pennsylvania, was disbarred from removing the case of a ship and cargo, condemned in New England, into the said Court of Appeals, and that little notice appears to have been taken of these laws, whilst Pennsylvania, conforming to the recommendations of Congress, concerning Admiralty jurisdiction, in the most legal and usual construction of the expression, has not, in our opinion, been treated by that honorable body with sufficient respect and attention.”<sup>1</sup>

It will therefore be seen, from this statement, that Mr. Bryan's attitude was thoroughly legal and fair so far as the law then stood, and that he was perfectly willing to change the law again, if Congress so desired—but, with him, this particular case was closed by judicial process, on lines laid down by Congress itself, even before the Declaration of Independence.

Tuesday, February 1, 1780, produced three new committees, of one of which, that on equalizing fines and penalties with fee standards, the other two being on amending the profiteer act and the other on supply for the army of the United States, Mr. Shubart having the chairmanship of the last one. Wednesday, the 2nd, produced one on the Morgan-Shippen controversy that was not assigned to him. Three more were appointed on February 3, 1780, two chairmanships being assigned to Mr. Bryan, one being on measures of aiding the Pennsylvania Hospital and the second was to complete purchase or titles to real estate on which State buildings were located. The dispatch with which Mr. Bryan acted is indicated by the fact that the fine and penalties equalization committee of Tuesday, the 1st, was reported out on the 4th, when one more committee only was created. The 7th and 8th produced only two committees

---

<sup>1</sup> *Journals of Assembly*, Vol. I, p. 413-414. Only that part headed with the words "Resolved" was written by the previous Assembly, whose committee chairman, Lawyer Edward Biddle of Reading (p. 332), asked instructions of the house, and someone, unknown, wrote this part, and it was apparently voted without serious opposition.

of the whole, of which John Harris was chairman, and the 9th produced but one, a committee on Council conference of which Mr. Bryan was chairman, while the 10th furnished one on Congressional delegates' pay, of which Mr. Peale was chairman. Two committees of the whole with Mr. Harris as chairman were the sole committee output on the 11th, and also of the 12th, with one more committee, that on orphans, widows and annuitants, of which Mr. Bryan was made chairman. This made thirty-seven out of sixty-five committees of all kinds, whose chairmanships were held by the Philadelphia organizer of the Assembly.

On St. Valentine's Day of 1780, the Assembly received a report from the Inter-State Convention held on the 7th, the previous week, at the State House, which agreed upon a plan of price reduction and took measures to submit them to Virginia and New York for acceptance, because their representatives were not present; and provided for a second session at the same place on April 4th, next. Two more committees were appointed that day also, of one of which he was a member—the second one only of which he was a member but not chairman, this being one to amend an act on vendues. The second committee's chairman was Mr. Wynkoop, and they were to confer with their Congressional delegates, but were only to receive information. St. Valentine's was a busy day, for in addition to other things, the instructions to their Congressmen were adopted, and they bore upon the very important subjects of holding all states to responsibility for their quota in money and men by effective measures; the reduction of continental currency to some fixed standard; the suggestion that the states might borrow of individuals and so draw out supplies, now withheld because of uncertainty of payment, and an equality among the states as to granting unappropriated lands.

The next two days, the 15th and 16th of February, 1780, are notable, the first as the day the fate of Mr. Bryan's abolition act was determined by an engrossment vote of 40 to 18. Besides this four more committees were appointed, the chairmanship of two of them going to Mr. Bryan, the one on excise and licenses and the second on salaries

of the civil list, while the two others were on the militia service and prevention of horse stealing.<sup>1</sup> Mr. Bryan's bill for creation of the new High Court of Errors and Appeals was finished and ordered engrossed on the 17th, as the capstone of the judiciary system of the state, thus making its author the father of another great institution of the state. Congressional and French communications were received on the 18th and assigned to chairman Bryan and his new committee and an expired law to him as head of another. The 19th of February was productive of no new committees, but one more was created on the 21st, one on a perplexing case of guardian and children, of which body the author of the High Court of Errors and Appeals became chairman also. It was a poor day that failed to give him a new committee, but Washington's birthday did not produce one either for him or anyone else, as did the day following, also, on which several of his bills were put forward. The 24th gave the rare phenomenon of Mr. Bryan appearing in a minority; but it must be said he was in good company, as most of the other chairman of committees were with him, namely, in insisting that members of Assembly be not exempted from militia duty. But one new committee was created on Friday, the 25th of February, and its chairmanship was given to Mr. Peale, while none was created on Saturday.

Monday, February 28, 1780, was the day several of Mr. Bryan's and other bills, among them the High Court bill, were enacted, and the matter of the books of the late Receiver-General of the Pennsylvania Land Office was assigned to a new committee with Mr. Bryan as chairman. The day was especially notable because of chairman Bryan's presentation of the report on the civil list. This provided £2000 for the President, £600 for the Vice-President, £1200 for the Chief Justice and £600 for the other Justices. This was £500 more than the original grant for President, £100 more for Vice-President, £200 more for the Chief Justice and £100 more for the Justices, so this was moderately in keeping with the great change in prices and depreciation of

---

<sup>1</sup> Among the Bryan Papers at the Historical Society is a confidential letter of President Reed's containing his suggestions on this subject.



the currency. President Reed, in his letter, had suggested £2500 as proper for his office, so that his former colleague compromised on £2000.

One committee, not assigned to Mr. Bryan was created on February 29th, to consider petitions, and one of the same sort on March 1st, when, among several of his bills enacted, was the Abolition act, this with a vote of 34 to 21, as has been already pointed out. On March 2nd, a ways and means committee on army supply was appointed with Mr. Bryan heading it—his forty-fifth committee, out of seventy-nine. This was the second day to be distinguished by Mr. Bryan's vote with a minority, and as before in association with most of his fellow chairman, namely, because he wanted a severe militia fine for neglect of duty on tour and a tax for neglect to appear. Furthermore they gave their reasons that they wanted to destroy the practice of sending substitutes. An effort to patch it up and still leave a substitute in the law caused Mr. Bryan to leave his fellows and swing over to the majority, as he wanted to clear out the substitute system. The bill was re-committed to a new body, with W. Harris as chairman. Three committees and one board of trustees were formed on Saturday and Monday, the 4th and 6th, Mr. Bryan heading the one on abuses in taking up land on old rights, and being one of the Province Island board of which Speaker Bayard was head. The 7th was a busy day but produced no new committees, but the 8th was notable as being the occasion of passing the new Admiralty court revision bill that removed difficulties for the future, like the *Active* case. The 9th, Thursday, however, after being given over largely to the subject matter of Mr. Bryan's ways and means measures, with Mr. Wynkoop as chairman of the committee of the whole, produced two new committees of both of which Mr. Bryan was head, namely one on Congressional conference and one to prepare a bill on it.

The American Philosophical Society, of which Mr. Bryan was a member was incorporated on March 10, 1780, and one comparatively unimportant committee formed; and later in the day, on one question, Mr. Bryan received the smallest majority for his side yet given, 26 to 23. It was

on a pardon and indemnity law. The 11th passed with no new committees, but on the 13th Mr. Bryan headed the one on repeal on monopolizing and forestalling laws. For the first time, on March 14th, Mr. Bryan seems to have been absent at least part of the day; and on the 15th Mr. Peale was made head of a new committee to bring in a bill suspending *habeas corpus*, and Mr. Bryan head of one to amend the house of employment in the city. Mr. Bryan headed a committee on the 16th to transfer some mortgages of the loan office and on the 17th, two committees of the whole were had with Mr. Wynkoop as chairman, and one committee of inquiry at the treasury was appointed on the 18th. The 20th produced no new committees, but a Congressional financial message was referred to Mr. Bryan's ways and means committee on the 21st. On the latter day the Pennsylvania leader had another small majority on his desire to have commissioners of purchase under the army supply bill appointed by the Supreme Executive Council, 30 to 23; and, for the first time, had a tie vote on wanting to suspend the legal tender laws so far as continental currency was concerned, 27 to 27, but speaker Bayard joined Mr. Bryan's side, and a committee to bring in an additional clause to the money bill was assigned to Mr. Bryan's chairmanship. His civil list schedule of salaries was also voted, while some differences in the matter of the Connecticut claims and Virginia boundary were also assigned to a Bryan committee.

The 22nd of March, 1780, was a busy day in pushing forward legislation, but the day following was one of those rare days in which Mr. Bryan was in a minority. This was on his report nulifying continental currency as a legal tender, and his reasons were that they, or most of them, had depreciated to one-sixtieth their face value and it was an outrage to pay a debt with them, and that no honest man would, so that this could only strike the dishonest ones. He lost, however, 30 to 24. A committee on the condition of Assemblymen's, Congressmen's and the Council's salary payments was assigned to Mr. Harris' leadership. The house also considered adjournment from the 25th of March to the

10th of May, and of course, under those circumstances, but one more new committee was appointed and that on the last day, leaving Mr. Bryan with forty-eight out of ninety-three committees in the two sessions. And, as has been said, this included all of every kind—even committees of the whole—, but that in importance of subject, he easily had ninety per cent. of all of them. It is not strange then that after the thirty-two laws of the sessions were ready to be reported as sealed, the Assembly should recognize the tremendous extra work of their remarkable leader by voting him an extra £500 for his “extra service,” before they adjourned—and it was done spontaneously and without a trace of opposition.

All the great laws of this session were the work of Mr. Bryan; and, as in the case of his great predecessor of the time of Penn, David Lloyd, he proved himself a master in drawing legal papers. This was the nature of his leadership: he was not only their political leader and a member of the Assembly but he was their attorney to draw their laws. He was to this Presbyterian-led General Assembly what David Lloyd had been to the Quaker Assemblies of the first half-century of Pennsylvania. Like him also after 1701, he was the organizer or reorganizer of the laws to make them express the purposes of the re-modeled old constitution. That was the nature of this Assembly; it was one to reorganize the whole structure of government to adapt it to the new order. And as Lloyd was chosen to lead because he, more than anyone else, was responsible for the new constitution of 1701 under which it met; so Bryan was chosen to lead this one because he, more than any other man, was responsible for the retention of that old constitution, revised to meet the new conditions of the republic, so far as they were yet fixed conditions.

The forty-one laws of this Assembly of 1779–1780 were the laws this body was elected to bring to pass, and these two sessions were the bulk of their term. The early and late summer sessions were usually short ones and of comparatively slight importance. The Assembly of 1779–1780 had now done its chief work. The constitution was now

established at least for its first seven years, and so firmly established that it would take something stronger than the state, in all probability, to change it. For, as it was looked upon as merely the adapted old constitution which had stood for seventy-five years, up to 1776; it was now looked upon as having stood for nearly eighty years, and would now remain permanent. And because George Bryan had secured this result—had withstood the fierce assaults upon it from not only the hand of Franklin, but now, from the hand of the greatest lawyer on the American continent, James Wilson, it is no wonder that at the close of the Assembly of 1779–1780, of which he was their unparalleled leader, his prestige should be the greatest of any man in the state government.

## CHAPTER XVI

### JUSTICE OF THE SUPREME COURT AND HIGH COURT OF ERRORS AND APPEALS OF PENNSYLVANIA

1780

Looking backward over the adult career of Mr. Bryan, one feature stands out with great distinctness: Of the twenty-eight years since he arrived from Dublin, fifteen years, over half of them, had been increasingly spent in devotion to the law, as lawyer, somewhat, but chiefly as judge; and that, too, with a peculiar devotion to the institutions of the country, political, judicial and otherwise. He had seen the almost essential independence of Pennsylvania, with her single-chamber Assembly in almost full power, because of the power of the purse, with laws of her own making. And his devotion and admiration had been fused to a white heat in the interpretation and application of these laws, as judge, and in the defense of them for long years against plausible attacks from within and menacing ones from without. Then came his Herculean self-imposed task of holding to the old constitution through revolution and attacks from a new quarter, which, to him seemed like the old Proprietary efforts to have, what he considered, an undemocratic upper chamber, namely, the theories voiced by James Wilson and his followers, whom Judge Bryan considered seriously tainted with Proprietary and British or, at least, aristocratic political and social philosophy. But he had not only won the preservation of the old constitution, adjusted to the new real independence, in Pennsylvania, but had seen the chief ideas of it practically win out, in the new government of the union, with its single Congressional chamber. Thereupon also he was called from the bench, his last service in the Orphans' Court, at least, being as

Presiding Judge on May 28, 1776, just as the Constitutional Convention was about to be called,—as chief organizer and counsel in the new executive part of government, and had complete control of the legal features of it for most of his term. Even President Reed deferred to him, and he was himself one of the first lawyers of the commonwealth. It was his efforts, while executive, to remould the laws through his party in the Assembly, that led to his resignation and election to that body so that he could re-make the government in keeping with the adjusted constitution, as a constructive lawyer and jurist only could. Then came a period of less than six months in which, as law-maker, he was easily chief and master, drawing practically all the laws and securing their enactment—laws which cut out the Royal and Proprietary roots from the state and institutions, freed a race of slaves, created new organs of justice, like the remodeled Admiralty Court, and provided a substitute for review by the King in Council, in the High Court of Errors and Appeals. All that was now needed, to establish the work of his hands, was for him to go into these highest tribunals of interpretation and application of the constitution and laws, which he had been so powerful in creating, and remain there, working to that end for the rest of his life.

This was precisely what Judge Bryan wished and what his party, the Assembly and the Supreme Executive Council also desired, in order to have his counsel in the organization of the new highest court, and the reorganization of the Supreme Court to effect necessary readjustments with the High Court of Errors and Appeals, which was the new organ of review. It is not probable that Judge Bryan looked upon the High Court as a necessity, for any other reason than because professional legal learning was altogether uncommon in the lower courts; and even the Supreme Court had had many members not trained in the law. It is doubtful, if, had the various benches been filled with trained jurists, he would have created a court of review on the sole basis of danger in leaving a final decision to our tribunal; and this would be more or less natural to an idealist, like him-

self, who, not being regularly trained in the atmosphere of the Temple or Inns of Court, might not be so permeated with the traditions and predilections of the profession. Certainly, if he, as he did, believed a single-chamber Assembly was wholly safe for law-making, he would in all probability also be convinced that a single court, other things being equal, should be an equally safe interpreter in applying them to the liberties of the people.

This may appear more clearly, if, the character of the High Court of Errors and Appeals be considered. It was definitely stated it was to take the place of appeal to King in Council both for the Admiralty and other courts, and especially with regard to error at the common law. And yet it practically amounted to making the Supreme Court itself a court of review, except in its own cases of first instance, and letting the Chief Executive and Judge of Admiralty, with "three persons of known integrity and ability" act in these cases. For this tribunal was to consist only of these latter and the three Supreme Court Justices, or, as the Supreme Executive Council now considered a fourth Justice necessary, four Justices, only one less than half of a full High Court bench, provided the "three persons" were promptly added. It was to meet twice a year in Philadelphia at an April 6th and September 20th term, and the April term was now imminent, as the Assembly adjourned on March 25th.

President Reed and the rest of the Supreme Executive Council, therefore, on April 3, 1780, "taking into consideration the state of the Supreme Court, and being of opinion the interest of the state required another judge, proceeded to choice, when the Honorable George Bryan, Esquire, was unanimously appointed to that office." This was on Monday and on Wednesday, the 5th, Judge Bryan appeared in the upper west room Council chamber, where he had been head of the state, and took, at the hands of Vice-President Moore, the oaths required by law to qualify him as "a Justice of the Supreme Court of the State of Pennsylvania," which, automatically, made him a Judge of the High Court of Errors and Appeals, which was due to meet the next day.

This automatically closed his membership in the Assembly also.

Justice Bryan's title was now both "Justice" and "Judge," the former in the Supreme Court and the latter in the High Court of Errors and Appeals. Curiously enough that was true, too, during his years on the bench of Philadelphia County, for while he was a Justice of the Peace, he was, as such, a judge of the various county courts, Common Pleas and Orphans'. So during the period from 1764 to 1776 he was known as both Justice Bryan and Judge Bryan. He was, however, so strong an individuality and so high a personal character that he was more frequently called Mr. Bryan or George Bryan, than by either of his judicial titles. It was only while he was chief and vice-chief executive of the state that he was almost invariably called by the title of his office; for these new offices took on the prestige of the Proprietary and their Governor, and that of such Royalty as the latter two properly held. When he was in the Assembly, however, at the height of his power, he was almost as invariably referred to as Mr. Bryan. This was in keeping with the nature of the case, for George Bryan, the defender of the old constitution, the political leader, the father of the constitution of the commonwealth, the law-maker, the first emancipator of slaves in a commonwealth, representative of the first continental Congress, leader of resistance to the Congress in the Admiralty case, re-organizer of the commonwealth, father of the High Court of Errors and Appeals and creator of the University of Pennsylvania, was a much larger man than a mere Justice or Judge, even of the Supreme and High Courts of Errors and Appeals. His name was larger than any title he had.

As he was now to be on these high tribunals of his own creation in association with other jurists, it will be well to become acquainted with them as his companions. It may be well to recall also that every one of them was of his own choice and he had probably the decisive share in their appointment. That has already been seen in the case of the titular head of the High Court of Errors and Appeals that was to meet the next day, President Joseph Reed.







A native of Trenton, New Jersey, he was born in 1741, and so was ten years younger than Judge Bryan, who was now nearly fifty years old. A graduate of Princeton College when he was sixteen, he studied law under a preceptor and was admitted to the bar at the age of twenty-two, after which he spent two years in the Middle Temple in London, returning to Trenton about the time of the Stamp Act Congress to begin practice there while Judge Bryan was a member of that Congress. It was in October, 1770, that he cast his lot in Philadelphia when Judge Bryan presided over courts in which he appeared. His talent and advantages made him confidential correspondent of Lord Dartmouth, the Colonial Secretary, and in 1774 became one of the city's Committee of Correspondence, while in 1775 he was President of the Second Provincial Conference. He became a Lieutenant-Colonel and military secretary to General Washington and in October, 1775, he returned to Philadelphia, where at the beginning of the following year was chosen to the Assembly, as has been seen, but declined as he was Adjutant-General of the Continental Army in the campaign about New York. Admiral Howe it was who brought him a letter to "George Washington, Esq.," which he declined to receive. General Washington secured his appointment as Brigadier-General in 1777 and offered him the command of the whole cavalry. He was also offered the state Chief-Justiceship but declined both, and remained with General Washington through all the campaigns about Philadelphia before and after its fall. He was chosen a member of the Continental Congress in September, 1777, but kept on with his military duties until December. As has been seen the city elected him to the Assembly in October, 1778, and the county chose him for the Executive Council, which latter he agreed to accept a little later, as he did do, and in December he was chosen to succeed President Bryan, with the latter as Vice-President. As President of the Supreme Executive Council he was now, *ex officio*, Presiding Judge of the High Court of Errors and Appeals, which was to meet in the room below the Executive Council room in the west room, or Supreme Court room, with its

arched entrances from the corridor, on the following day.

Next in rank in the court, according to mention in the act creating it, is Chief Justice Thomas McKean, whose court had been engaged chiefly in the treason, confiscation and other cases growing out of the war, in consideration of which they had been accustomed to meet in this same room, with him presiding, and two Associate Justices on either side of him. The Chief Justice was also Judge Bryan's choice on July 28th, three years before, but a few weeks before the fall of Philadelphia. The Chief Justice was also of Irish Presbyterian stock, and but three years younger than Justice Bryan, born at New London, in Chester county, in 1734, and educated under Judge Bryan's old pastor, Rev. Francis Allison. Young McKean had studied law in New Castle (Delaware) and was made register of probate, and admitted to the bar before he was of age, while he also became deputy Attorney-General for Sussex County. In 1757-9 he was a clerk of their Assembly, and in 1762, in association with young Cæsar Rodney revised the laws of the past decade. From that year, for seventeen successive years he was a member of Assembly, and was a fellow member of the Stamp Act Congress with Judge Bryan in 1765, and, he it was, who seconded in that body the one-colony-one-vote rule, and was one of the drafting committee, while his excoriation of President Timothy Ruggles for refusal to sign caused a challenge to a duel. He was Judge of Common Pleas there from July, 1765, and was the first judge to rule against stamped paper. Collector of the Port in 1771, Speaker of the Assembly in 1772, in 1774 he was chosen to the Continental Congress again and was the only member who served continuously until peace was declared in 1783, and so lived in Philadelphia much of the time. He was one of those who voted for the Declaration in July, 1776, and, by his efforts to get Cæsar Rodney there to vote with him, aided in making the vote final. He then headed a battalion in the Flying Camp to aid General Washington and so was not present to sign the engrossed copy. On his return he was asked by a Dover committee to

draft a constitution for Delaware, which he did that night, and it was unanimously adopted the next day. Thereupon he was made President of Delaware, and was in Congress at York, with his family on the banks of the Susquehanna, when Vice-President Bryan caused him to also be chosen Chief Justice of Pennsylvania, a situation not so strange when one recalls that every Colonial Governor of Pennsylvania had also been Governor of Delaware, and that in the seventeenth century the two colonies had been united for over twenty years. It will thus be seen that Judge Bryan had put two very strong associates upon the bench of the High Court, which was to meet on the next day in the old arched west room of the State House.

With President Reed and Chief Justice McKean, were the two Justices, also Judge Bryan's choice, during the summer of 1777 about two weeks after the Chief Justice's appointment, that had then completed the organization of that court for the first time since the Declaration. These were Justice William Augustus Atlee and Justice John Evans, the former a Lancasterian and the latter from Chester. Justice Atlee was about the same age as the Chief Justice—about four years younger than Judge Bryan. He came of a distinguished family, his father having been Lord Howe's private secretary in 1733, when the latter came over as Governor of Barbadoes, and his mother a cousin of William Pitt, the family seat being the famous residence of the novelist, Henry Fielding, Fordhook House, Acton Parish, near London. The father had settled in Philadelphia in June, 1734, in Second Street, on his marriage, and his son William Augustus, the Justice, was born on July 1, 1735, so that he was forty-five years old at this time. The death of the father when his boy was but nine years old, caused the family to locate in Lancaster, where William Augustus became a clerk in the Recorder's Office, and studied law under Judge Shippen, so that he was able to be admitted to the bar at the age of twenty-three. He soon became one of the most able lawyers of the state and when the Revolution opened he was Chairman of the Lancaster Committee of Safety and during the war was Commissary and Super-

intendent of the arsenal, barracks and British prisoners there when the government left Philadelphia and located at Lancaster. This was shortly after his and Justice Evans' appointment by the Supreme Executive Council in Philadelphia on August 16, 1777, the oath of office being taken on the 19th; so that he was still in Lancaster on April 6, 1780, when the new High Court was to assemble for organization.

Justice John Evans, being a resident of Chester and near at hand, was present, however, as "third Justice," his colleague being "second Justice," the Chief Justice being the "first." Justice Evans was the oldest member of the court, born in 1728, making him three years older than Judge Bryan. He was of Welsh parentage, his father bearing the same name. He received a classical education, under Dr. Allison or Dr. Blair, it is said; and he studied law under a preceptor, enabling him to be admitted to the bar at Chester in 1749, at his majority. He was one of the first in that county to become active in the Revolution on its committees and had been a member of the Supreme Executive Council, since the previous March 4, 1777, when he was selected as "third Justice" of the Supreme Court. It was he who had always been Vice-President, *pro tem.*, in Vice-President Bryan's absence from the Council. Their positions were now reversed, with Justice Bryan following him as "fourth Justice."

The only other member of the High Court of Errors and Appeals yet designated was the Judge of Admiralty of Pennsylvania, Hon. Francis Hopkinson, who was re-appointed on the very morning the High Court was to meet for organization. Judge Hopkinson, with the exception of President Reed, who was but thirty-nine years of age, was the youngest member of the new bench. He was also the most talented in many respects. His father, Thomas Hopkinson, was also a lawyer and one of the most learned and distinguished men of Philadelphia, when Francis was born in 1737. Judge Hopkinson was a graduate of the College of Philadelphia and studied law under the Colonial Attorney-General, Benjamin Chew, being admitted to the



JUSTICE GEORGE BRYAN  
of the Supreme Court of Pennsylvania  
From a painting by H. H. Breckenridge in the Supreme Court Room,  
City Hall, Philadelphia





bar in 1761, so that he was among the first attorneys to practice before Judge Bryan in the Old Court House at Second and Market Streets, when the latter came to the bench in 1764, at which time the young lawyer was librarian of the Philadelphia Library. In 1766 he spent a year in London with John Penn, Benjamin West, Lord North and others, in hopes of becoming a Commissioner of Customs for North America. He did become collector at New Castle (Delaware) in 1772 and later lived also in New Jersey at Bordentown, becoming a member of the Continental Congress for that state in 1776 and so becoming a signer of the Declaration and one of the committee to draft the Articles of Confederation. Under Congress he became head of the Navy Department and also Treasurer of the Continental Loan Office. Judge Hopkinson had become a musician, and a poet satirist and humorist also, as well as an artist of ability, from both of which latter talents his colleague, Justice Bryan, was destined to suffer, if he were sensitive to skits and cartoons, although that was not the case at this time, as they assembled at the State House Supreme Court room and took their seats on April 6, 1780. For Vice-President Bryan had himself voted for Judge Hopkinson as successor to the late Judge of Admiralty, Hon. George Ross, and Judge Hopkinson was now a member of this High Court because of that choice.

No record exists of the seating of the court on the elevated bench on the west side of the room; but, if they sat in the order of their mention, with Presiding Judge Reed in the center, Chief Justice McKean and Justice Evans would have been on his right and Justice Bryan and Judge Hopkinson on his left, since Justice Atlee was not present. It is not known whether it was made a special occasion, with the presence of the bench and bar and others; but it is known that at least the three Justices wore black robes of office and continued to do, as Justices, until early in 1785, five years later, when the Supreme Court adopted the red robes, much against certain public sentiment, which thought it reminded one too much of the late "red coats." The black robed jurists of the High Court of Errors and Appeals,

on this day, however, did no business but read the act constituting it, "opening in due form," and then unanimously choosing William Bradford, Jr., as Register, adjourning to the 15th of the same month, at 10 o'clock.

There was but one case at the latter date, when Justice Atlee was present, but Judge Hopkinson was absent, because the case was one of appeal from his court. The next session, on May 3, 1780, when both Judges Atlee and Hopkinson were absent, the decree of the Admiralty Court was affirmed, after which no record of any session exists until 1782. So there seemed to be little use for this "Supremest" court of Pennsylvania at this particular time. It was Justice Bryan's first experience on a bench in the State House, however, and as a jurist of the highest tribunals of the commonwealth.

The Supreme Court room, or west room, at the State House was not occupied, after the High Court adjourned on April 6, 1780, until the 10th, when the April term of the Supreme Court itself began, with the black-robed court sitting in the same place, this time with Chief Justice McKean in the center, and Justices Atlee and Evans on his right and Justice Bryan on his left, presumably; or Justice Atlee on his right and Justices Evans and Bryan on his left. The commission of Justice Bryan was read, making him fourth Justice of the Supreme Court and of Oyer and Terminer and "General Gaol Delivery."

This was the most busy term in years. The first case before them was presented by Attorney-General Jonathan Dickinson Sergeant for the plaintiff and the Hon. James Wilson for the defense. The Attorney-General had nine cases at this term, which lasted, except for two days, April 15th and May 3rd when the High Court had a short session, until May 4th. Mr. Wilson was in five cases, in one of which he was pitted against the Attorney-General and in one with him. They were an interesting contrast, both big men, but Sergeant was a positive brunette while Mr. Wilson had the conventional sandy hair and complexion of the Scotchman. The Quaker lawyer, William Lewis, was the third to present a case and he had seven more



THE SUPREME COURT ROOM  
where Justice Bryan sat as Fourth Justice—and



THE VIEW WHICH JUSTICE BRYAN FACED AS HE SAT ON THE BENCH



during the session, usually with or against Mr. Wilson, these two being probably the ablest attorneys at the bar when Justice Bryan sat. In one case Lewis and Wilson were against Sergeant and in another Wilson and Sergeant were against Lewis, while Lewis was also against Jacob Rush, the brother of Dr. Benjamin Rush, as Lewis and Wilson were also in another case. Jasper Yeates of Lancaster was the third attorney to appear and he had seven cases, usually alone, and his extreme care in keeping records of everything was destined to make him practically the first Supreme Court reporter, and even to win him the title of "The Father of Law in Pennsylvania." Others brought their cases: Edward Biddle, Edward Shippen, Jacob Bankson, William Bradford, Andrew Robeson, John Morris, William L. Blair, Hartley, Edward Burd, Elisha Price, Thomas Smith and a few others. Some of these lawyers were equal to any in the history of the commonwealth.

During mid-summer, Justice Bryan wrote Justice Atlee a newsy letter which has been preserved. "I had the pleasure of writing you about six days since," he writes on August 8, 1780, at Philadelphia. "Few arrivals of ships have happened here lately, but at Baltimore they have several; some from Martinico. The British fleet lay at Saint Lucia on the 16th ult<sup>o</sup>, but it was supposed they would follow the combined fleet to leeward. The reports of captures of inward bound vessels for Baltimore, was mistaken, or perhaps a speculating artifice. All were safe arrived save three; and one of these put into Delaware. Yet pickaroons disturb the navigation of the Chesapeake. There has been some public pork taken by them.

"Two Baltimore privateers lately took a ship in the north seas of Europe, bound from Liverpool to Archangel. The captors most unjustifiably destroyed all the documents of the vessel and cargo; and the witnesses, [whilst] they declare the bottom to belong to England, assert the cargo to be the property of the Empress of Russia. . . .

"A vessel is seized in the Schuylkill for lading flour in breach of the embargo.

"One Joseph Turner, who was tried for treason in the

Oyer and Terminer here, is caught in Virginia, attempting to aid the enemy at New York by loading a vessel there. A letter of credence from D. Franks and others, containing intelligence, was found on him & a copy sent hither. On which rather slight grounds, a warrant of Council is out for 8 or 10 persons. This is the report of the matter which goes about.

"One Mitchell, brother of the late partner of Saml. Carson, deceased, has laden a ship at London for New York, pretendedly, taken his wife and family in; and furnished with a pass from Dr. Franklin, has run into Boston. There a frigate of Congress has seized his property, but this will be taken off. 'Tis said she left England in June. That the English Channel fleet was but 38 of the line; the combined 60; but both still were in port.

"Mr. Izard, our late agent at the Court of Tuscany, is come in the French fleet, arrived at Newport, is here. I am told he blames our agents in Europe for declining an offer made by Count de Vergennes of 5 sail of the line to cover So. Carolina, last winter. He thinks himself ill-used by Franklin and Dean, and is perhaps rather prejudiced. He can give very precise accounts of European affairs. Arthur Lee is not come. Dr. Brown, the Physician Gen'l of the Army, a man of amiable character, has resigned his office [& re]turned home to Virginia. This is one effect of the late trial of the Director-General. Green has absolutely resigned his Q.mr.ship.

"I am told Genl. Thompson, who, by the way, has involved his sponsors, Wilson and Yeates, resents the publication of his conviction on the Chief Justice. If he does, he is just as wrong as when he libelled him. Mr. McKean knew not of it before it was in every ones hands. I sent Dunlap to Mr. Burd to get an abstract of the proceedings in the whole tour, putting into his hands, at the time, the list at Carlisle, much in the words of the *Pacquett*. To this Mr. Burd, I judge, prefixed the judgments at Lancaster and York. Ever since the resolution, I have attended pointedly to this useful warning to offenders, or persons likely to offend, and shall still do it, Genl. T's

threats notwithstanding. In this way the benefit of punishment is much extended, and, as I conceive, those who have characters to lose, greatly restrained.

“From the eastward we learn that General Clinton has recalled his forces from the Sound of Long Island, on w<sup>ch</sup> Genl. W. was passing the Hudson. Adml. Greaves, with 9 of the line, besides frigates, lay near point Judith, [or] next part of the main, west of Rhode Island, & not two leagues from Newport. You would laugh to think what a fright some timid men, both in and out of C[onnecticut?] have been in, lest the British should attack the French at Rhode Island.

“Early in June there was a proposition made in Parliament to withdraw all forces from America. This was from the tediousness of intelligence from Charles T[ownsend]’s Ministry, & its tools in England paint our distresses such for want of clothes &c. that we are turning savages very fast. This to keep up the spirits & hopes of a really distressed people. I am not able to say how the Militia will turn out. Much will depend on the example set by certain people.”<sup>1</sup>

Between the spring and fall terms of the court in Philadelphia the Justices were engaged largely in that relief tribunal established by the act of May 20, 1767, known as the *Nisi Prius* Courts, held in each county, and there were ten counties beside Philadelphia at this time, Chester, Bucks, Lancaster, York, Cumberland, Berks, Northampton, Bedford, Northumberland and Westmoreland, out of which last a new one, Washington, was carved the next year, 1781. These became very popular courts in the days under the old constitution and even later, because they were usually held by pairs of Justices, at this period, who mapped out circuits; indeed it is entirely probable that the appointment of a fourth Justice may have been due to this need, and the Assembly’s interest in it. These courts were an inheritance from Great Britain, where they were created to take care of certain cases in those parts of the country where the local judiciary were not sufficiently learned in the law, the sum-

---

<sup>1</sup> Atlee Papers, Library of Congress.

mons always being issued for the Westminster bench, in ejectment, trespass and like cases, to be tried then, "*nisi prius*," or "unless before" tried by a Justice at the local place, the Latin phrase in the summons thus giving name to these courts, much as first words of Latin hymns have given name to them. The circuits would be made up according to the needs, both as Supreme Court sessions and *Nisi Prius* sessions, and the court itself would decide them among themselves. The *Nisi Prius* were the chief circuit courts, however; and they would be arranged with one or two justices to the circuit as the needs of the counties at that particular time indicated. The records of these courts have been so badly cared for that no history of them could be written, even if it should seem desirable. Sometimes Justices went in pairs and sometimes singly, and as they usually went on horse-back and some of the lawyers accompanied them—for all the big lawyers had cases in all the counties—the legal cavalcade was liable to be a jolly one, as well as have its times of hardship and exposure.

Justice Bryan's home in Philadelphia in 1781 was in Union Street, an east and west street between Spruce and Pine Streets, at Second, Third and other streets in that neighborhood. His family was a large one, apparently of nine or ten children at this time, only two of them being of age, namely Sarah, at twenty-four and Samuel at twenty-two. The records show the others, if all living, to have been Arthur at twenty, Francis at eighteen, Mary at fifteen, George at fourteen, Elizabeth at twelve, William at ten, Thomas at nine, and Jonathan at six.<sup>1</sup> The eldest son, Samuel, was showing himself a young man of ability, so that within three years from this time, he was to follow in the footsteps of Benjamin Franklin as Clerk of the Assembly, chosen to it on November 3, 1784. He was also to become a fellow publicist with his father as shall presently appear.

The past year had witnessed a movement of the Wilson

---

<sup>1</sup> Records of the Second Presbyterian Church, Philadelphia. The youngest, Jonathan, was founder of the South Carolina branch of the family, where he has had distinguished descendants.



element that threatened the popularity of Justice Bryan's party. This was the effort of Mr. Wilson and his friends, after the fall of Charleston in the spring of 1780, to form a bank to supply funds for the army, which was successful and was opened on July 17th, and with such excellent results that by October, the gratitude of the whole union was so great that it began to react upon the people of Pennsylvania and to threaten to weaken the "Constitutionalist" or Bryan forces. It resulted in such attacks on Mr. Wilson, personally, as a rehabilitator of all the old elements that they had opposed, that he was compelled to issue a public statement after the election, disavowing any present intention of agitation against the constitution of 1776. This success, however, led, at the beginning of the present year, 1781, to an effort, by Mr. Wilson, also successful, of transforming this bank into a national bank, like those of England and France, and placing Robert Morris in the Congressional office of Financier-General, with this Bank of North America as a national organ. Mr. Wilson was also Advocate-General to the French Government and aided in persuading Maryland, at the instance of our ally, to accept the Articles of Confederation on February 2, 1781, and so making them the second constitution of the union. Virginia was also rapidly being compelled to join others in surrendering the western lands to the union by a course of isolation, so that a tremendous national movement was in progress that was portentous with apprehension, among the Constitutionlists of whom Justice Bryan was the recognized head. The bank plan was under way during the spring months, while Justice Bryan was on the Supreme bench at the April term, 1781.

On April 10, Chief Justice McKean, with Justices Atlee, Evans and Bryan opened the Supreme Court, for a busy term that lasted until July 6th, in what must have been long cases. As usual William Lewis, the Quaker lawyer, was much in evidence with the greatest number of cases, namely, six, Attorney Jasper Yeates of Lancaster having the next largest number, five, and Jonathan Dickinson Sergeant coming a close third with four. Mr. Wilson had three and Thomas Smith of Bedford and Alexander Wilcocks-Hartley

of Philadelphia two each, with some others in somewhat similar proportion. The full bench was confronted by an equally heavy, if not heavier program, on September 4th, and they had been sitting about a month and a half when they were cheered by news of the surrender of Lord Cornwallis and the British forces, and the close of the long Revolution. The term lasted into the next year, January 19, 1782. Jonathan Dickinson Sergeant had the remarkable number of sixteen cases, while Mr. Lewis came a close second with thirteen and Mr. Wilson with ten, Mr. Bradford following next with six. These were important cases where Wilson would be pitted against Lewis and Sergeant, or Bradford be opposed by such a powerful combination as Lewis, Wilson and Sergeant, as he was twice. These must have been interesting days to the Chief Justice and Justices Atlee, Evans and Bryan.

Justice Bryan and Justice Atlee of Lancaster became intimate friends, and enough of their correspondence has been preserved to show Justice Bryan's system of county correspondence that kept him in such close touch with affairs all over the state. On March 26, of this year, 1781, he writes: "I must beg your excuse for my long silence, but the arrival of my son<sup>1</sup> from Europe this winter & getting him set agoing in the world, by procuring consignments to the Havanna, has taken up my attention greatly. You too have been silent.

"A subject, near to me, has, however, provoked me to break out & resume my correspondence with you. The Assembly, last December, voted salaries for divers officers, which might have done. But a bill has appeared in the public prints, some days since, to settle salaries for three years. In this your allowance, in the meantime depreciated one quarter, is lowered nominally; but that of the 3rd and 4th Justices, equally debased by the fall of the money, is reduced by the committee, Jacks, Hogg & Steinmetz, to 2/3d, so that it scarcely exceeds half of the sum ascertained in the spring of 1777, before you and Mr. Evans accepted. I say no more on it, but refer to the inclosed Newspaper,

---

<sup>1</sup> Samuel or Arthur, his first and second sons.

& another yet to be printed. The pieces are written by an independent man in this city & will perhaps have some effect; otherwise I can not stay with you. Lowry, indeed, absurdly moved the house to strike off the 4th Justice, & has, I am told, said he aimed at me; Why, I cannot say. I never had any dispute with him. Others proceed more cunningly, by voting an insufficient salary.

“But we are all going into confusion; last week the Assembly determined to emit £300,000 state paper, as the only resource to carry on the war. That is, to lay a tax of  $\frac{2}{3}$  or  $\frac{3}{4}$  upon all the money in circulation. Thus to burden the monied men, dealers and others that handle money, and to enable the rascally part of the community to pay their debts with moon-shine. For if the intended money can be passed, such will be the event. That they desire to debase the new Continental [issue], I do not wonder, as it would proportionally lower the six yearly taxes ordered last sitting. The former bubble arose partly from mistakes of the principles of finance, & partly from the difficulties we were in. Much may be said to excuse it. But that a legislature should deliberately forecast a scheme of this sort, is really promoting iniquity by law. They have not, however, the delusion & enthusiasm of the Whigs now to build upon and therefore the playing of the Bubble again is scarcely practicable. They dread to lay equal and effectual taxes; as if their constituents were a strange kind of stupid beings, who would not yield a part of their property to serve the rest. Every countryman must be sensible that the United States being declared to be in rebellion, the lands and all other property are, in the eye of the law of England, forfeited; and they must be favored men, they must have excellent interests, who can get acts of grace to distinguish them from the general wreck of the country. In this circumstance, they must be as weak as our Tories, who are involved in the plunder of St. Eustachius, that dream of being safe without proper exertions. These adventurers fondly think that their friends in England will procure them redress for their property taken by Rodney. But the British officers seem to be taking measures, that, if relief were de-

signed, it may be impossible; for a ship of 32 guns, a merchant frigate, has been taken into St. Francis, laden with goods and negroes, even family plate going for Jamaica. Surely our people are not less men than other nations. No nation, when all was at stake, but would give up a part to save the rest. There is no little folly, much wickedness and great daring in this design of emitting more money. It must disappoint itself & renew distresses from which we had begun to recover. Honest and proper measures are the most simple. Reduce our bills of credit to less than £200,000. This would be full enough for a medium of trade and taxes, when added to the hard money, which would then come out & join in circulation. Upon this ground taxes, equal and efficacious, might be devised. He that paid latest would not pay less than he that paid first. There would be no bribe, as at present, to keep back, either to the taxable, collector or any other. We could then, perhaps, borrow, but who, in his senses, will lend the public, or any other, when a false weight & false measure is established by law?

"What must foreigners think we are? An association of villains, while we go on thus."<sup>1</sup>

The attack on the Justices' salaries mentioned in the above letter was the beginning of a campaign between the two parties, a preparation for the fight to displace the Constitutionals under Justice Bryan's leadership; and the organization of the Bank of Pennsylvania into the Bank of North America during this year, and its support of the union, contributed greatly to raise the prestige of the Republicans under James Wilson's guidance; and, as a matter of fact, did seriously disarrange the Bryanite great majorities in the Assembly, in October, 1781, coincidentally with the surrender of Cornwallis, which was but slightly later in the same month, and would have still more disarranged that majority had it occurred before the election.

This new Assembly had been in existence a couple of months, when Justice Bryan wrote his friend Justice Atlee another illuminating letter on New Year's eve, this time,

---

<sup>1</sup> Atlee Papers, Library of Congress.

also, because of "a late transaction of our very *worthy* legislature," said he "Besides, Mr. McKean is going, or perhaps gone for New Castle county, on occasion of the death of his brother's widow, who has left two orphans without any guardian. This brother, it is supposed, was lost at sea above two years since. Our Chief [Chief Justice McKean, also] has just burried his third daughter, a fine girl of 12 years, who had spent her childhood mostly at Bordentown. This stroke was unexpected, tho' the child had not been well for some weeks.

"You must have perceived the operations of the cabal in the Assembly. Determined on a more hasty revision of the Constitution than that appointed for the year 1783, they have begun by an attack on the character of those who were considered as the supporters of it. This you must have observed in the rancorous and inveterate pursuit of Mr. Reed. Mr. R. is now at the bar again. The noisy and unspecified complaint about an undue election for the county of Philadelphia, calculated by weight of 1500 figures to bear down all defense against the gross calumnies contained in the petitions, was another part of the plan. The exalting and raising out of their humiliation divers Tory and neutral characters, &c. &c. Among other strokes, an indirect attempt to remove the present judges of the Supreme Court by holding them still to low and precarious salaries, in manifest contempt and breach of the constitution, which requires fixed [salaries], and for delaying of which, they have no longer an excuse, now hard money is become the standard again. In short, they have passed an act for giving us a salary for a year, and that year, by a monstrous *ex post facto* claus and wording, to begin from the 22d of June last [1781], so that all specie, price received, is to be accounted as part of the reduced salaries for the current year, half-gone before they finished their bill passed. The salaries which appeared in the bill, as published by Hall & Sellers on 22d November, stand unaltered, except that that of the Chief Justice is increased to £900. Just as this was done, I am well informed that Mr. ——— stood up & acquainted the house that he had a very important matter against one

of the judges to disclose; he was sorry for it, as he respected him personally, but his duty did not allow him to be silent, &c. &c. He then said, as we are upon their salaries, the 2<sup>nd</sup> Justice [Atlee] has received pay and rations, ever since the year 1778, as Commissary of Prisoners. Such was the import of Mr. ———'s speech. A full silence ensued as to his information; whether it prevented an amendment of your allowance is uncertain, but it is clear that they left £400 standing in the bill; Mr. Evans's and mine are at £300. It is whispered, I suppose injuriously, that Mr. E—— says he is contented. Only 15 dissented from the final establishment of the act, of whom 13 have inserted strong reasons for their conduct on the minutes.

"Mr. McKean & I have agreed to repulse this stroke against the contrivers of it, by standing up against it stiffly. But we wish to see you here on the 7<sup>th</sup> of January [1782] to have your mature advice on this illiberal & extravagant attack on the judicial department. Besides, there are many important trials to take place. Information, in particular, against the importing of British goods, on which a dozen trials may be necessary. Congress have knocked up this trade by setting the privateers on it, by a late ordinance.

"The Junto [Wilson and his friends?] is rather staggered by the event of the evidence on the Phil<sup>a</sup> election. Many of the charges (the specified charges, 24 in number) were not attempted to be proved. The whole appeared to be common proceeding, with some usual inaccuracies. The clerks at Wentz's, the upper place, were not sworn; but this was not charged. There is a charge that the clerks at German Town were not sworn. It appeared they were. It was rather uncertain whether they took in a vote at Wentz's before two, afternoon. Lacey's letter was very ill-expressed, yet it had no effect. Every company of Militia was at full liberty to choose, no proof of force or confinement having been made. Yet much evidence for the defense is yet to be given. They have also reserved opportunity to support the charges by further proof. It is adjourned till 10 days after the Assembly meets again. Meantime, the Council take it up on Jany. the 3<sup>rd</sup>. The very same charges are tabled there,

tho' several were given up. Three members of the board take the evidence in a committee.

"By a publication of Rivington's, it should seem that something material has passed in So. Carolina. He has defeated & killed Genl. Greene; but he assigns his news to friends among us. A report of 2000 men gone to S. Carolina from N. York is said to be a reality of 1100 only. The latest accounts from Gen'l Greene's camp are of 22<sup>d</sup> Nov<sup>r</sup>. He had just passed the Congaree to move downwards. Cornwallis, Arnold, Franklin & many others are gone for Europe. There is a stir rising at Boston. Govr. Hancock, dissatisfied with the salary permanently fixed on the office, has applied for an increase. As he lives very high, perhaps £3000, our money, proves insufficient. The people think they had done very amply.

"Our Assembly made an house about Novr. 3<sup>d</sup>; Sat till last Friday; have passed the bill for destroying the Judicial branch; a small supplement for bread and flour shipped off, & a short act concerning the frontiers. These are all, I believe,—partly heard a contested election & spent £3000 specie and upwards. But they have filched £600 pr. amm. of the Judges. They have finished a bill for £500,000 specie Tax, so far as to publish it; but a strong was made and will be again made to insert, "or paper money," in order to make another profitable speculation for gorging the vultures, who are not satisfied with £80,000 or £100 thousand, filched last summer by buying up £270,000 bills of credit at six, eight and ten for one, & selling it out to the country at 2½ for one; for thus they realized an immense Tax in their own pockets, tho' £40,000 hard money of the £100,000 has not reached the Treasury; & yet without the knowledge of the people who contribute to it. Mr. Henry, your neighbor, has a full idea of this flagitious business. The Assemblymen seem to have a glimpse of it & showed great dislike of it.

"Please to give my best respects, with the compliments of the season, to Mrs. Atlee & the young ladies"—etc.

"P. S.—I have run out to a length I did not expect. Col. Magaw, before the house rose, moved for a sum to be

appropriated for the relief of our Line, now in Carolina, but Messrs. Delaney, Meredith, &c. were loud against the measure. So it was over-ruled. Besides the amount of the present taxes for paper, there is about £150,000 more, chiefly re-emitted since Octr. If the Assembly will insert paper in the bill, I doubt not we shall have enough more sent forth to lower it first, buy it in again, & then take advantage of the people at  $1\frac{1}{2}$  or 2, or  $2\frac{1}{2}$  as before."

"Not a penny from any state has reached the financier [Morris], save Pennsylvania. The southern states are not able. New England & Jersey lay all out within themselves. New York has the Green Mountain dispute to occupy her. Delaware is clothing & payment reduces forces. Genl. W is very urgent that the Army be recruited."<sup>1</sup>

This letter of New Year's Eve, 1782, i. e. December 31, 1781, plainly betrays apprehension of the national bank, or Bank of North America group, of which James Wilson was acknowledged leader; and, when it refers to "Delaney, Meredith" and others in the Assembly, it was naming the Wilson leaders there. Had Justice Bryan been aware of the plans afoot and their real significance he might well have been more than merely apprehensive; he could have felt profoundly startled and been fully justified. He did not know, however, and as he had held the old constitution against all comers for seven years, and in that period seen his allied institution, the Articles of Confederation, fully adopted as the inter-state constitution, he felt that he had grounds for confidence in these two fundamental instruments of state and nation.

As some of these manifestations of political hostility had to do with the Supreme Court during the past year, 1782, let a glance be taken at the April term, which began on the 10th and continued to the 27th. Chief Justice McKean, and Justices Atlee, Evans and Bryan sat on the bench in the arched west room at the State House and listened to a good many cases. As usual William Lewis had the most, thirteen in all, while James Wilson came a close second with eleven.

---

<sup>1</sup> Atlee Papers, Library of Congress. The last paragraph is on the margin of the first page.



Mr. Yeates of Lancaster, Mr. Bradford and Mr. Reed—ex-President Reed—of Philadelphia came next with ten each, while Mr. Sergeant nearly equalled them with nine, and Mr. Bankson with eight. Some were big cases with Bradford and Reed pitted against Lewis and Wilson. A big case was almost sure to have two or more of the above lawyers in it. There were over a dozen other lawyers with from one to five cases: Coxe, Currie, Blair, Hartley, Hoofnagle, Smith, Scott, Biddle, Humphries, Osborne, Wilcocks, Read, Galbraith, and others.

It was during this term that a new paper was launched in Philadelphia that was destined to have very much to do with the Supreme Court. The previous year, 1781, a journal, very vigorous controversially and favorable to the Bryan element, was established by Francis Bailey, in Market Street above Third, called *The Freeman's Journal*, and it had contained some criticism of Chief Justice McKean for accepting the office of President of Congress as a Delaware member of that body. He was defended by "Jurisperitus," who was supposed to be the Chief Justice himself, although on August 22, 1781, he did not hesitate to publicly name two of those attacking him, one of them being Mr. Sergeant. This paper became a great organ of controversy in the new political changes, and there were not wanting writers to attack the national bank crowd and also to attack the Supreme Court, whose bench was made up of the Bryan element.

As this paper seemed to prosper in the new and acrid controversial manner, a very able and very vitriolic editor, whose abilities along this line had led him into conflict with the government in Maryland, Eleazar Oswald, a kinsman of one of the English gentlemen who were engaged in negotiating the treaty of peace, Richard Oswald, thought here was a rich field for his talents, and in April, 1782, launched the *Independent Gazetteer* in Third Street. He was in fine fettle by the September term of the Supreme Court, in which only the Chief Justice and Justices Atlee and Bryan sat; and as this court, because it contained appointees of the Bryan party, was the object of political

attack just as the Assembly and Council had been, the sympathizers with the national bank crowd could see only occasion for criticism in anything this court did. Therefore on October 1, Mr. Oswald had allowed, or written, an anonymous open letter to the Chief Justice against his course in the case of Col. Proctor. Promptly the Court on October 12, 1782, caused the arrest of Editor Oswald for libel upon the court. The grand jury did not indict, however, and the court reprovved them, and sent them back for reconsideration. They still refused and made a public defense of their course in the press. These occasioned articles on the grand jury, which were signed by "Jurisperitus" and "Adrian" in defense of the court, which Judge Francis Hopkinson says were attributed, the former to the Chief Justice and the latter to Justice Bryan.<sup>1</sup> The first one of "Adrian's" appeared in the *Freeman's Journal* on January 15, 1783, and is a well written account of the whole case, introductory to a treatment of judicial control of juries, which appeared in the same journal on January 29th. It is worth while gaining some idea of it, even if not absolutely known to be by Judge Bryan, since so able a man as Judge Hopkinson was so certain it was, for the rest of his life.

"There are some among us," writes "Adrian," "who have a mistaken idea concerning of a grand jury, as if it were less subject to the direction of the court than a petty jury. Among these we may reckon the protesting members of the late grand jury of the city and county. Perhaps the words grand and petty may mislead, as they seem to indicate a superiority in the first over the last. But this is mere sound. *Grand* and *petit* are relative terms, signifying in the French language, from which they are taken, great and small. Thus the jury in *attaint*, consisting of 24 persons, who formerly tried a traverse jury, when accused of bringing in a *false* verdict, was also styled a grand jury.<sup>2</sup> It is obvious, indeed, that the jury which tries and decides ultimately, upon the guilt or innocency of the culprit, must

<sup>1</sup> *The Miscellaneous Essays, etc.*, Francis Hopkinson, Vol. I, p. 194.

<sup>2</sup> *Blackstone*, Vol. 3rd, p. 351. [Foot-notes other than figures, in these pages, are from the text quoted.—The Author.]

be more important, than the inquest, which only inquires into the charge, and formed the accusation. Most commonly, both are made up of men, uninformed in the law, who must lean on the court and attorney general for aid.

“Grand jurors are not the choice of the people, but are summoned by the sheriff or his deputy; and such is the confidence of the law in the justices, that authority is given them by statute, 3<sup>rd</sup> Henry 8, cap. 12, in quarter sessions, as well as at the assizes, to reform the panel, by striking out names, and putting in others at their discretion. Besides this, persons called upon for their services are liable to lawful challenges like as petty jurors, by the persons, who are to be charged before them. And if the grand inquest *conceal* any offense, it is the court’s duty to order a jury to be summoned to enquire into such *concealment*, and upon conviction to punish the guilty.<sup>1</sup> Thus the law supposes that grand jurors, as well as other officers may offend, and has provided for their trial. If the grand jury were to present persons on corrupt practices used with the members of the jury, as has often happened, or if it find a bill, upon the cast of dice,<sup>2</sup> or if any other irregularity vitiate their proceedings, the court will quash all doings so circumstanced, and punish the offenders. For this purpose it must be necessary, sometimes, to open, in the most public manner, what has passed among the jurors in their chamber. Grand jurors transgress their bounds, if they admit any evidence, which has not been previously proposed to the bench, and received its approbation; and ordinarily the court sends down to them only witnesses or other evidence to support the charge, and they find upon that which is adduced on the side of the prosecution; for their finding is but of the nature of an accusation, to be afterwards tried. This has been the settled practice for ages past,<sup>3</sup> and nothing more than a few unexemplified opinions in the law books can be shown to the contrary.

---

<sup>1</sup> 2nd Hale’s Hist. 160, I. 1st Hawkins’, 215.

<sup>2</sup> Burn’s Justice, Title Jurors, V. § 9.

<sup>3</sup> 4 Blackstone, Comment., p. 300. [He quotes it, with:] Thus does this elegant and enlightened writer state the practice; he who in his most useful work has spoken of the transcendent privilege of trial by jury, with encomiums which some may think to border upon enthusiasm.”

"If the grand inquest might receive all that offers, the most improper and illegal testimony might be received; but then, what would become of those approved rules of evidence, which the wisdom of ages has devised for the safety of the innocent and the investigation of truth? One practice would obtain tomorrow; another the next day; or the mode would depend on the culprit, who he was, and who his friends. Interested or disabled witnesses would be brought in or rejected, as caprice, party or prejudice predominated. It is true, the grand inquest retires by itself and so is not under the constant attention of the court; yet an enquiry by the grand inquest, before the court, would be proper in case of intricacy. This sitting apart may have been allowed for two reasons: first lest the accused get knowledge of the charges against them, and escape from justice; for anciently the indictment of an offender preceded his arrest.<sup>1</sup> Hence the importance of swearing the jurors to keep the public secrets. Secondly, because, the grand inquest, enquiring so far only, as is necessary for indicting, this doth not require such particular attention, as the business of the traverse jury; and the court may therefore proceed with trials, whilst the grand inquest is employed in another place in forming accusations. It is for this reason that they ought to be persons of good understanding.

"That the grand inquest can have no testimony except that sent by the court is manifest from hence, that witnesses sworn before any magistrate, not of the court, could not be punished for perjury, as the attestation in such case, would be the doing of an incompetent officer, and thus one of the chief ties upon the mind of the person testifying, viz. prosecution for falsifying upon oath, would be lost. The law, indeed, supposes that every one examined before the grand jury, is qualified in court, as it gives the clerk a fee for administering the attestation. It is remarkable, that when an officer, or private man, is by act of Assembly directed to take an oath, special authority is also given to

---

<sup>1</sup> Institutes, 175. 2 Hawkins 184. 4 Blackstone 285.

some judge, justice of the peace, or other magistrate, to administer such oath.

“Should the grand inquest, in the manner contended, hear the evidence for and against the accused, it is manifest that their inquiries might probably enable a multitude of guilty persons to escape. On the other hand, such an investigation would bear so much the look of a trial, that it would carry down the prejudice of a verdict against the culprit, and prevent a fair hearing before the petty jury. Whereas an indictment found against an innocent man, upon the evidence of prosecution only, will be contradicted, and the party acquitted, with less hesitation, upon a full and public enquiry, and without injuring his character.”<sup>1</sup>

“If the grand jury could examine all testimony that should offer we should lose, in great measure, the important advantage of the public prosecutor.<sup>2</sup> In ancient times, particularly in the Greek and Roman States, passion and malice greatly discoloured and discredited prosecution for crimes, and as every one injured was then obliged to step forth personally, as an accuser, many virtuous and prudent men were restrained from hazzarding their characters, by becoming public informers. But the attorney general, derived to us from the feudal institution, being called upon by office to appear against the guilty, much of the operation of private resentment is prevented, and individuals may, in modern times, without injury or imputation on themselves, appear as witnesses, whilst this public accuser, influenced by motives of duty merely, prosecutes with zeal, tempered by moderation. But if the private accuser be led into the grand jury, with all his provoked feelings, and the bridle which this officer holds upon criminal prosecutions be slackened down, the inconveniences and enormities, formerly experienced, will be renewed, and grand juries lose their importance, perhaps their use. Hence this palladium of innocence may be lost, and we may be driven to admit of the

---

<sup>1</sup>As in the late case of the commissioners of the city and county, who were indicted for extortion and oppression.

<sup>2</sup>Montesquieu, Spirit of Laws, Vol. I, page 117.

filing of information by the attorney general, as the less dangerous course of the two.

"It is therefore safest for grand jurors, as well as for the accused, that the witnesses be sent to them, be subjected to the objections of this officer, and that the bench decide thereupon *in open* court.

"If gentlemen, who may be called to serve their country in this important business, would be content thus to take evidence from the attorney general, under the direction of the court, they would confine themselves within the proper bounds, marked out by the wisdom of the law, and the experience of ages; but if by a contrary practice, they open a door to the abuses above mentioned, of which few persons have any idea, they will soon find themselves involved in a labyrinth of errors, just as they wood, if they were to attempt to frame indictments themselves, or venture to correct or alter the forms laid before them by the attorney general.

"Now let the claims of the lat. grand jurors for the city and county be measured by the doctrines heretofore stated, supported, not by nameless writers, but by the most reputable authorities in the law, which are quoted in the margin,<sup>1</sup> and then it will appear, that through the contents of the memorial they have published, may be agreeable to their own notions, they do not quadrate with the law of the land. It was extraordinary, indeed, for persons who could mistake the oath of a witness, for that of a grand juror, to prescribe to the judges of the supreme court.<sup>2</sup>

"The grand jury has been mentioned in my first publication, as a part of legal machinery, but with no idea that their judgment was or ought to be under any influence or bias whatever. They must be carefully held to the rules of law in receiving of evidence, but when they have examined, they are to decide for themselves. In this way, and in this only, can the people at large be let into, and possess a share

<sup>1</sup>This obsolete word, and some other quaint expressions are fair earmarks of Justice Bryan's style. There is no more doubt in the mind of the present writer that this was from his pen than there was in that of Judge Hopkinson. This, in fact, seems to be one of the best examples of the Justice's style known to the present writer.

<sup>2</sup>In the memorial the 16 signers allege, that they were sworn to present *the whole truth*. Neither they, nor any others impanelled on a grand inquest were ever so attested.

of the power of judging. It is evident, however, that if they were not introduced to this delicate, but important privilege, under such cautions and limitations, as have been layed upon them by great men who lived before our days, they could not be trusted with any share of the business. Left to themselves, their decisions would be wild and capricious, and new modes of proceeding would be adopted on every occasion, till that enquiries by jury and jury trial would be, by common consent, discarded; for among all civilized people, substantial justice will be sought and attained in whatever mode it may be had.

"I will only further remark, that the *discretion* of the judges, which the signers of the memorial seem so greatly to dread, is not an arbitrary power of doing or forbearing anything at the mere caprice or will of the court. Discretion, in legal understanding, is an ability to discern between right and wrong, according to the rules of recourse, law, and justice, and not of private opinion.<sup>1</sup>

"25 January, 1783.

A full account of the affair by "Jurisperitus" appeared in the next issue of the *Freeman's Journal*, February 5, 1783, and it is plainly the work of Chief Justice McKean, and, so far as the court was concerned, closed the incident. Thus it was that Judge Hopkinson began with his satirical skits, under various pen names. He had one in the *Pennsylvania Packet* in January, 1783, in which, among other things he said, in the naïveté of a supposed ignorant countryman: "At length I saw a piece in the *Freeman's Journal* of the 15th instant, signed ADRIAN; and was horribly shocked to find sentiment and doctrines advanced on this subject so very contrary to those I had entertained. As I doubt not but this performance must have been written by a very great man, from the elegance of the style, and by a very great lawyer, from the subtilty of the reasoning, I began to fear I was all in the wrong." Thereupon he quotes from *State Tracts* at length. He makes much of Adrian's calling the grand jury "a legal machine," and

---

<sup>1</sup> 5 Coke, page 100.

calls him "our new Pope." On February 1st, he addresses himself to both the Chief Justice and Justice Bryan, as "Judge Jurisperitus" and "Judge Adrian." Not content with prose, the Admiralty Judge launched into verse—also anonymously, as was the custom—in "A DESCANT ON ADRIAN'S assertion that a grand jury is nothing more than a legal machine, subject to the direction and control of the court."

"I'VE A THOUGHT—WHAT'S IT LIKE?"

"'Twas winter—round the social hearth  
Devoted all to glee and mirth,  
A social few, in humor gay,  
Were sporting half the night away;  
And still some quaint device was found,  
As laughter, wit, and wine went round.

"'Attend,' says Didius, 'if you will,  
I'll make a trial of your skill;

"'A thought hath just popp'd in my mind,  
Let everyone a likeness find;  
And he that can't a likeness fit  
Shall take a glass to whet his wit.  
For wine is known to be specific  
In making barren brains prolific:  
And 'tis past doubt, a bumper will him ease  
Who is hard bound in making similies.  
A thought doth now my fancy strike;  
Pray tell me what my thought is like.'

"'Tis like a broom, a door, a lock,  
A wagon, lute, a barber's-block.'

"Quoth Didius, 'what a medley here!  
Things so dissimilar, I fear  
Cannot by any skill be shown  
Like to a single thing unknown.  
But now the group's together brought  
I'll tell you what it was I thought.

"'A learned author, Adrian hight,  
Did late in *Bailey's* journal write,  
And plainly proved by dint of law,  
That jurymen are men of straw;



And for no other use designed  
 But to confirm the Judge's mind;  
 That they've no conscience of their own,  
 But from the bench must take their tone;  
 And have no eyes to see what's right,  
 Unless the court affords them light;  
 And tho' their doings may seem tragic,  
 They're phantoms rais'd by legal magic;

“Whom conjuring judges take to court,  
 To shew their skill in making sport;  
 To toss about like any jack-stone,  
 And for authority—quote *Blackstone*;  
 Referring us to page three hundred;  
 As if judge Blackstone never blunder'd.

“All this did Adrian in his fury,  
 Pronounce against a late grand jury;  
 And proved that *animal rationale*  
 With jurymen will never tally:  
 Because 'tis plainly to be seen  
 A jury's but a mere machine.  
 My thoughts thus on grand juries ran;  
 Make out a likeness if you can.”

Thereupon Titus is made to show that juries are like brooms; Sempronius, that they are like a door; Endocius, that they are like a clock; Dion, that it was like the lead horse of a team; until Didius closed the session.<sup>1</sup>

Doubtless, as has been said by one of Judge Bryan's contemporaries, there never was a worse period of unlicensed epistolary and journalistic battles than in these days of the *Freeman's Journal* and Oswald's *Gazetteer*. Judge Hopkinson, again under his pen name, tried to mollify it with fun in his account of a “Terrible Uproar” in the “Eminent Family” of “Lady Pennsylvia,” who had a son “Independence,” after her husband's death, and was compelled to find a nurse. She tried Reedina [Pres. Reed], and wearying of her, wanted “Madam Potterina” [Gen. Potter], but enemies of these two secured “Mrs. Richardson” [Pres. Dickinson]. Friends of both sides intrigued with disastrous results. Mrs. Richardson's chambermaid, “Kitty Oswald,” the seamstress, Miss Jackson; the cook, “Peggy Rush”

---

<sup>1</sup> Hopkinson's *Essays*, Vol. I, p. 228.

[Dr. Benj. Rush] and her brother, the clerk, "Jacob," and others, were opposed by "Reedina" and her chief steward, "Thomas" [the Chief Justice] and the under steward, "George" [Justice Bryan], "Fanny Belly," the second girl [Bailey], "Jonathan," the late coachman [Sergeant] and others made the "Uproar," although all professed attachment to young son, "Independence." One day, in the absence of Lady Pennsylvia, Kitty and Fanny begin a tongue lashing designed to expose family secrets. Kitty says Fanny [Bailey] was brought by George [Justice Bryan] from Lancaster to do his dirty work. Fanny replies in kind and there was soon a free-for-all encounter, when the Lady Pennsylvia returned and upbraided them all, saying they should be judged by some house-hold economy servants [the Council of Censors] who came to her every seven months [years.]<sup>1</sup>

Of course, this was all political, not personal. Judge Hopkinson and Justice Bryan sat side by side on the bench of the High Court of Errors and Appeals several times during the year 1782 and 1783 when this controversy raged. During 1782 most of the cases (and there were not many) in the High Court came from the Supreme Court, so that the justices concerned had to take no part in the case, and it made such inroads upon the court management, that, in 1783, at the April term, two of the additional three members provided for in the constitution, were appointed by President Dickinson and the Council, namely, Hon. Henry Wynkoop of Berks county, who took his seat on April 6, and Hon. Samuel Miles, who took his seat on the 15th. This latter Judge was to figure, soon, in the septimal constitutional revisers and critics, the Council of Censors, in which Justice Bryan was to make another stand for the adjusted old constitution of 1701.

---

<sup>1</sup> In this uproar, p. 308, one of them "threw a quart of slush on George, the steward's old scarlet cloak; but George avoided fighting openly, and only silyly pinched his adversaries as opportunity offered." The date of this piece not being known except that it was about 1783-4-5, this reference to the scarlet robes recently adopted by the court, probably at the April term, 1785, seems to place the skit later than its order in the *Essays* would indicate. A writer in the *Independent Gazetteer*, Oswald's paper, of May 21, 1785, objects to the recent change from black to red robes, which would suggest that it was done at the April term, 1785. He also objects to their use of the old Congress room as a dressing room, since Congress was no longer there.

## CHAPTER XVII

### JUSTICE BRYAN AND THE COUNCIL OF CENSORS

1783

The remarkable success of the national bank group in revivifying the finances of the union, in their *imperium in imperio*—for such the Financier-General with the Bank of North America were—encouraged them to great vigor of plans for the coming year 1783. They proposed nothing less than an attack on both the state and national constitutions, and, when one says “they,” he means in a very large measure the leader of them, James Wilson. The public debt of the United States was the greatest immediate question before them, and they attacked it with the same skill and courage as they had created financial power for a helpless state and nation in 1780 and '81 and won the war. They first proposed to capture the state Assembly in order to send Mr. Wilson to Congress to begin operations there. Their success at the October election in 1782, while not so great as they hoped, was great enough to elect John Dickinson, whom Mr. Wilson favored for chief executive of the state, over General Potter (whom the Bryan element favored) by 41 to 32, and even keeping him from the state vice-presidency by three votes. The result was that on November 12, 1782, about a month and a half before Justice Bryan wrote his New Year's Eve letter, Mr. Wilson and a group of sympathetic colleagues were chosen to Congress for the first time since the fall of Philadelphia. Within a month of that New Year's Eve letter Congressman Wilson, in the room across the hall of the State House where Justice Bryan sat on the Supreme bench of the State, below the one in which President Dickinson and the Council sat, insisted that national credit must be secured by establishment of general funds to be collected by Congress—which was

to say, the *national government must be given the power of the purse*, constitutionally, by an amendment to the Articles of Confederation. Here was the critical hour of the whole history of the new United States, but only profound students of political science recognized it. Here was the entering wedge that was to split the Articles of Confederation and the remodelled Pennsylvania constitution of 1701.

The plans of the Wilson group were centered chiefly on the national side of them, although Mr. Wilson, himself, knew the fight was really a fight against one thing, with two sides to it; namely, against a *single-chambered government in either state or nation*, to secure a real, self-restrained government in both. If the single-chambered national government was destroyed, the single-chambered state government could not stand. He was confident, too, that if the national government were given the power of the purse, the people would see to it, that a body to which it gave taxing power should be one to which they were willing to entrust their money. This was a strategical year in which to make the attack on both constitutions, for it was, 1783, the seventh year of the state constitution, which, itself provided, should be the one for a process of re-examination and amendment through the organ of an elected Council of Censors, who should report on what should be done, if anything.<sup>1</sup> In a certain sense, this septennial body was a constitutional convention and its sitting, on this occasion, was destined to cover nearly a whole year; so that it was occasion for a great opportunity to capture this in the autumn election, as they had captured the Assembly already, and also the Executive Council. In fact this Council of Censors and the Supreme Court were now objects of attack by the Wilson party.

Mr. Wilson, himself, however, was concentrating his efforts on the opening wedge to replace the Articles of Confederation, and he succeeded, on April 19, 1783, in securing the passage of his resolution of amendment, giving the

---

<sup>1</sup> For full treatment of the subject of this paragraph see Vol. I, of *The Life and Writings of James Wilson*, by Burton Alva Konkle.

power of the purse to the Congress, and its submission to the various thirteen state legislatures for adoption. This started what might be termed a species of national constitutional convention in thirteen sections; for, the giving of the union the power of direct taxation was the Keystone of the whole constitutional question; or, to change the figure, it was the fuse that would utterly destroy the vicious weak Articles of Confederation. If they would agree to give the nation the power of the purse they would see to it that the nation had a real government capable and worthy to be trusted to handle their money. This was most skillful sapping and mining in political science: it produced thirteen state schools of political and constitutional study. Here were the beginnings of the making of a real constitution of the United States. Here was the final battle in the campaign between the two constitutional ideas represented on the one hand by Mr. Wilson, who believed in the self-restraint of checks and balances in a constitution, and, on the other, by Justice Bryan, who believed in concentration of power in a single body, the legislature. It was a great stake, and nowhere in all the world's history was there ever a more strategic constitutional battle than this in Pennsylvania. There was the curious phenomenon of states—thirteen of them—wanting a concentration of power in the national legislature in one body, while eleven of them would not have such a thing in their own state government. Pennsylvania, under justice Bryan's leadership, wanted it in both state and nation, so far as her will had been expressed, just as the British people do today and as do a great many students of political science. And the Public Debt stood facing them as a stern schoolmaster to compel them all to most intensive study, one of the first results of which was a demand that all states claiming western land surrender them to the union to aid in meeting this public obligation; and the peace treaty gave prestige to this demand. And then, as if to furnish an object lesson in weak state and national governments, a mere mob no larger than a company appeared before the State House, which contained them both, and on June 21, 1783, demanded that the soldiers be

paid before any other financial plans! Mr. Wilson and the rest of Congress, stood firm, however, and Philadelphia ceased to be the capital of the United States, until this great school of political science should result in a real government such as that at which Mr. Wilson aimed.

While this school of political science is in preparation and operation in 1783, let us glance across the hall from Congress and note through the arches, that, at the April term of the Supreme Court, only Chief Justice Thomas McKean, LL.D., and Justice George Bryan comprised the bench on April 10th and indeed for the whole session until the 26th. There were many cases, but they must have been short ones. Mr. Lewis had most—thirteen in all. Another Philadelphia lawyer, Levy, had next most, eight. Bankson had seven, while Bradford and Sergeant each had a half-dozen. Wilson and Yeates had five each and Ingersoll four. Shippen, Hartley, Ingersoll, Wilcocks, Biddle, Rush, Reed, Read, Clymer, Smith, Chambers, Potter, Mifflin and a few others made the usual representative list. A special session was held August 2, 1783, a short one, in which some rules for admission were formulated. These provided that the lawyer must have had four years experience as a clerk to a well recognized lawyer and one year's practice; or three years as clerk and two years' practice. They were to be examined by two appointed for the purpose, who were to make exception where the legal study was made after the attorney was of age.

The Chief Justice and Justice Bryan had not sat at the April session of the High Court of Error's and Appeals, the session of 16th April, 1783, consisting of Judges Dickinson, Hopkinson, Wynkoop and Miles, before whom Sergeant brought three cases, in two of which Wilson was for the defense, and in one of which Wilson was colleague of Sergeant, and Lewis and Wilcocks for the defense. At the June 16th session, however, Justice Bryan and the Chief Justice were present at the opening of court, but withdrew as they had acted in most of the cases before the court. It is notable that every one of the decisions of the Supreme Court were affirmed, which spoke well for their fairness

and ability. At the September session, however, all of the court were present but Judge's Atlee and Wynkoop; and it is noticeable that the seating of the court, at least according to the order of the minutes, gives Judge Hopkinson of the Admiralty Court precedence over the Associate Justices of the Supreme Court, so that he and Justice Bryan sat next each other. The attorneys are Ingersoll, Lewis, Sergeant and Wilcocks, as it was a short session.

Before turning to the campaign for the coming election not only of Assembly, but, what was quite as important, the septennial Council of Censors, it may be well to note a lower court of which the Supreme Court Judges were members, as well as the High Court, namely, the criminal or Oyer and Terminer Court. As has been intimated elsewhere, the lack of professional training in the local courts over the state made necessary the creation of the *Nisi Prius* Courts, in which Justices of the Supreme Court sat in various parts of the state in exceptional civil cases requiring learning; so also in criminal matters, where so much of personal liberty or even life was at stake, the Supreme Court Justices sat as a criminal court in each county, sometimes as a full bench and sometimes in pairs, or three, as convenience dictated. Judge Bryan's first appearance on the criminal or Oyer and Terminer bench was at Chester in April, 1780. He sat at Lancaster, York, and Carlisle in May and in Philadelphia in September, while in October he was at Easton and the following month at Reading and again at Chester. In 1781 his successive terms were at Philadelphia, Chester, Lancaster, York, and Philadelphia, Chester, Reading, Lancaster, and Doylestown. The year 1782 found him trying criminal cases, in succession, at Philadelphia, Chester, Easton, Reading, Carlisle, Lancaster, and Doylestown, followed by Philadelphia, Reading, Lancaster, Chester, and Philadelphia again. It was in this court that the Oswald case arose. The year 1783 provided a circuit as follows: Philadelphia, Doylestown, Chester, Lancaster, York, Carlisle, Reading, and Easton, followed, in the autumn, by Chester, Philadelphia, the new Western county of Washington and that of Westmoreland, although

he was in Philadelphia at the October election. Most of these courts were conducted by the Chief Justice and Justice Bryan, as both Justices Evans and Atlee were often absent. They were the ones, it will be recalled, who sat in the Oswald case, and they were by far the ablest judges of the court, and very able men besides.

Likewise before turning to the autumn campaign of 1783, it will be well to recall Justice Bryan's relationship to the University of Pennsylvania since the mid-summer of 1780, where we left him engaged as Treasurer and Trustee in its organization, or its reorganization from the status it had as the College of Philadelphia. As Treasurer-Trustee, Justice Bryan naturally became the chief financier or ways and means member, and, as a jurist, was almost always one of their two attorneys. Furthermore he was generally on a committee to which delicate diplomatic incidents were assigned, and he was generally present. For example, in September, 1780, he was on the committee to deal with ex-Propost William Smith, D.D.; and was chairman of the committee in charge of the Norrington estate and mills, which was one of the University resources. In 1781, he was one of the University visitors in the second division, was on the committee on repairs and that on finances to be presented to the Assembly. On September 10th, he was given sole control of the wheat basis of financial calculations. Of the Trustees, Chief Justice McKean, Judge Hopkinson, Justice Bryan, Jonathan B. Smith, Dr. Thos. Bond, Dr. Wm. Shippen, Dr. Clarkson, Revs. Farmer, Sproat, Helmuth and White in attendance that month, Rev. Dr. Sproat and Justice Bryan were assigned the first serious case of insubordination of a student, who, contrary to orders of the faculty, included some remarks about Maj. André in his commencement oration and so failed to get his degree with the rest. They made young Francis Murray wish he had not done it, during the months he was without his sheepskin. This was a period of much difficulty in reorganization of the medical school especially, due partly to politics and partly to a feud between Drs. Morgan and Shippen. The result was that the University of Pennsyl-



vania at Fourth and Arch Streets by May, 1782, had 27 boys in the Philosophical or Provost's School; 50 in the Mathematical School; 75 in the Latin School; 92 in the English School, and 24 in the German school, not counting the Medical or Charity Schools for Boys and for Girls. By December, however, the Boys Charity School was reported with 60. On July 2, 1782, Justice Bryan was made chairman of a financial reorganization committee for the whole institution. His colleague, Judge Francis Hopkinson designed and prepared a new University seal late in that year. The year 1783 was notable for the University's lavish distribution of degrees to the French allies and the conferring of that of Doctor of Laws on General Washington, for which Justice Bryan voted on June 26th of that year.

With these varied activities of this able leader in the summer of 1783 in mind, one may now turn to the aggressive campaign of the early autumn to capture both the Assembly and the Council of Censors. The new rallying power about the national bank group, which was leading not only in the agitation for the grant of the power of the purse to the union and nationalization of western lands, but was gaining control in the Assembly and were now aiming to capture the Council of Censors too, were drawing to them all the old conservative elements that had been more or less allied to the Proprietary and Quaker sections; and this so alarmed the Bryan element that, so early as June 14, 1783, a mass meeting was held at the State House, of which Judge Samuel Miles was chairman, which called upon all to see to it that no one who deserted the colonies in 1775, or since, should be allowed citizenship nor restoration of estates by law. They saw attack all along the line from the single chambered ineffective Articles of Confederation to the old state constitution, the University and Proprietary estates confiscation, the Censors, the Supreme Court and the whole Bryan structure. They, in turn, proposed to capture the Assembly, Council of Censors, and Supreme Executive Council and then go for the national bank's state charter and pull down the whole proposed Wil-

son structure, before it was even complete in its framework. And it was a keen, close contest. The Assembly was captured by the Wilson element and Philadelphia put Judge Miles on the Council of Censors, which was very close.

As this body was the one on which the existence of the old constitution was supposed to rest, and the one in which Justice Bryan was therefore especially interested, attention may be turned to its career. On November 10, 1783, the authorized time for them to assemble at the State House, they took the lower room, now vacated by Congress. No quorum appeared, however, until the 13th, when, of the 26 members elected—two from each of the thirteen counties—19 were present, among them being Judge Miles, Fred. A. Muhlenberg, Generals St. Clair and Wayne, Justice John Evans, and two vigorous Bryanites from Westmoreland county, John Smiley and William Findlay. They organized with Muhlenberg as President, Fitzsimons as head of the rules committee and Judge Miles as head of the conference committee to see the Executive Council. These two men headed the main committees on investigation. Mr. Oswald was not elected printer, which showed that the Bryanites had control of the organization. On December 4th, they determined to go into committee of the whole on whether amendment of the constitution is desirable; and it was significant that on the same day ex-Provost Dr. Wm. Smith asked the restoration of the College of Philadelphia. Ex-President Jos. Reed declined to be a member on the 9th, because his physician advised his going to Europe.

By the 30th of December, 1783, the feeling over the contested elections in Philadelphia was so great that a big petition was received claiming that a mob of soldiers chiefly, like that which had tried to intimidate Congress in June previously, had so terrorized the people on the 14th of October at the voting place, that they could not elect either the Assemblymen or Censors they desired. When it came to a vote President Muhlenberg headed 14 to 7 in favor of the election being lawfully carried out. Messrs. Smiley and Findlay were among the dissenters and claimed that out of 1620 votes 230 seemed to be "stuffed" in, as moderns would

say, 340 voted illegally,—altogether about 440 votes that ought not to have been received and that changed the election from what it should be. President Muhlenberg, Gens. St. Clair, Wayne and others gave their side.

On January 2, 1784, came the first test vote on whether the old constitution should be revised, 12 to 10 in favor of revision. Judge Miles headed the committee to propose amendments and on the next day, Saturday, the work was to begin; but the minority brought in new depositions about the Philadelphia election, under the management of Mr. Samuel Bryan, Justice Bryan's son, "Mr. Bryan, Jr." they styled him, who completed these elaborate depositions that day. On the 6th the county part of the contention was dismissed, which left President Muhlenberg and Gen. St. Clair fixed in their seats, but did not settle the question regarding Judge Miles and Mr. Fitzsimons for the city. On January 7, 1784, Smiley and Findlay making a fight against it, the report on changing the constitution was received by a vote of 12 to 10, Miles and Fitzsimons voting with the 12; but on the 19th, Monday, when the first paragraph, against a single chamber came up, the vote was 12 to 9, on account of an absence. The question of a single executive brought the same vote, as did that on independence of the judiciary, and non-rotation in office. Then they began positive recommendations embodying the essential features of present day constitution, single executive, double legislature, independent judiciary, and the like, section by section, with the 12 to 9 majority. The upper house was called the Legislative Council. The Smiley-Findlay group said that as the constitution proposed that two-thirds of the Censors must vote for a call for a Constitutional Convention to make it legal and the vote was never more than 12 to 9, it was illegal, and so was every vote taken after the first vote. The other side said they didn't vote on a convention, just recommended the changes, and they made an appeal to the electorate on that basis. Territorially, this division was interesting: Bucks and Berks counties and the two new southwestern counties, Washington and Westmoreland, with half of Northampton

and Lancaster, furnished the Bryanite minority. The session adjourned on January 21, 1784, to June 1st.

It is interesting to observe that on January 2nd, the American Philosophical Society, that purely scientific body which somehow had thus far always been a perfect barometer of political life in the state, elected Benjamin Franklin President; Dr. Thos. Bond, Revs. John Ewing and William White, vice-Presidents; Hons. Thomas McKean and George Bryan, M. Marbois and Samuel Caldwell, Councillors; and other officers of like tenor, Judge Hopkinson being Treasurer. This was the University group, very largely.

But, to return to the Council of Censors, the pressure against Judge Miles—or Col. Miles, as he was better known—was so great that the Assembly on March 5th, passed a resolution acquitting him of all charges made against him. This became so embarrassing that, after the Council had been in session a week, on June 8th, he sent in his resignation and a new election was ordered, as also one for a deceased member. There being a dead-lock, nothing was done, and on June 17th, they vacated the old Congress room for election purposes on Friday the 18th, when the electorate chose Justice George Bryan to succeed Col. Miles.<sup>1</sup> This result was announced on the 21st and on the 24th, the redoubtable defender of the old constitution was present to guide the battle for it in this crisis. His son, Samuel Bryan, was made secretary. He was at once added to the committee of 18 Nov. 1783, to enquire whether the constitution had been preserved inviolate in every part and whether the executive and legislative bodies had been faithful to the constitution. This gave material for a very pretty contest, and on July 2, 1784, the first test vote was taken on the case of a delinquent Northumberland county commissioner who did not send in tax information, and Justice Bryan—or as he was so often called, Mr. Bryan—headed a three-fourths majority—15 to 5! Only Mr. Fitzsimons, Generals St. Clair and Wayne and two York and Berks county

---

<sup>1</sup>At this election Mr. Bryan received 350 votes; Chief Justice Thos. McKean, 115; Lawyer Wm. Lewis, 12; and W. A. Patterson, an old soldier, 8; which gave him 215 majority, according to Oswald's *Gazetteer* of 26th June, 1784.

lawyers, Hartley and Read, were left of the twelve! Justice Bryan and the public absolutely transformed them. This was modified some from time to time. Death favored them also in the return of General James Potter of Northumberland county on July 7th, and on whether he should be added to the big committee, it was done 15 to 9. Then on July 16th, the old Trustees of the College of Philadelphia asked for a repeal of the act disfranchising them on Nov. 27, 1779, unlawfully, among them being Lawyer James Wilson.

On July 21, 1784, a Bryan-Smiley resolution called for the original manuscript constitution. Much time was given to an effort to punish the Northumberland commissioners. Justice Bryan paved the way for operations by a vote of 16 to 4 that present members of the government were subject to this investigation as well as past ones. This was done on August 5th the day they began to consider the big committee's report, which, it is interesting to note, was printed by Editor Bailey of the *Freeman*. The thoroughness of the plans for investigation of all departments of government was noticeable. Justice Bryan's hand was quite in evidence. He won a test vote on the 13th by 11 to 10. A committee found there were 19 errors in the printing of the constitution. Then, on the 16th of August the Bryanites, by a vote of 14 to 9 substituted the new report, postponing the old one of January, but really discarding it. By a similar majority Justice Bryan succeeded in making several amendments, nearly all of them limiting the power of the Assembly after the manner of a bill of rights. Many of these were based upon abuses of the General Assembly since and including 1781, and one of these was their action on the famous Wilson measure of April 18, 1783, authorizing the delegates to agree to give Congress the power of the purse—all done in seven days. It looked as if someone, possibly Justice Bryan himself—probably, indeed—had kept a list of unconstitutional acts day by day ever since 1781, and each of these were now sifted to the bottom. For example, the incorporation of the national bank April 1, 1782, acknowledged the right of Congress to incorporate—an unconstitutional thing, says

the new report. The opposition tried to have the act of confiscation of the College of Philadelphia declared unconstitutional, but Justice Bryan secured a vote of 13 to 9 against it, both sides putting on the minutes their formal reasons for their course. The reasons of the 13 are undoubtedly the work of Justice Bryan and they furnish one of the best illustrations of his ability as a lawyer, a writer, a politician, a patriot and man of wide information. He cites the University of Oxford in the time of William III as an example of institutional disaffection. "For it is plain," the report continues, "that this evil can only be cured by law, which shall pass through all their charters. Nay, at this rate, should the Bank of North America, or any other corporation, become a monster of weight and influence, and be able to counteract and over-rule our legislative proceedings, nothing less than a general rising of the people would be equal to the exigence. ——— We consider these *imperii in imperio*, these governments within the government of the state, holding common estates of large value, and exercising the power of making bye-laws, as against the spirit and policy of democracy, and only to be endured in order to obtain advantages which may greatly counterbalance the inconveniences and dangers which accompany them. In Pennsylvania we have not a sole executive officer of permanency and weight, sufficient to restrain, and whose interest it is to keep those communities in awe; they may, therefore, gradually produce an indirect, yet firm aristocracy over the state, before we be aware of the mischief."<sup>1</sup>

This was not only Censor criticism but also political notice of what the national bank might expect from the next house, if the Bryanites were in control. General Wayne brought up the constitutionality of the test oaths, but Mr. Bryan defeated it by a vote of 15 to 8, on August 30th. On the same day the full report was adopted and the Bryan element gave more reasons for supporting it, one of which was that they opposed assumption of executive and judicial powers by the legislature, such as had occurred

---

<sup>1</sup> Journal of the Council of Censors, p. 131.

during more than seven years past, but it was designed to entrench the old constitution more immovably than ever.

They then took up the subject of taxes and unconstitutional laws that ought to be repealed, as well as a host of miscellaneous subjects. The executive branch was canvassed with the same thoroughness, but the current Assembly refused to send its own records. On September 23, 1784, it was shown that over 18,000 petitioners had appealed against the course of the first session of the Council of Censors in asking a convention. Generals St. Clair and Wayne tried to get a request that the Assembly impeach all of the Council of Safety of 1777, which included Justice Bryan, but, without his vote it was beaten by 11 to 8. The minutes were to be published by Secretary Samuel Bryan under the direction of his father and Mr. Hart, and be distributed by them. The public address, also undoubtedly the work of Justice Bryan, was adopted by the party vote of 12 to 9, and the 25th of September, 1784, nearly a year since the Council of Censors' first meeting, they adjourned.

The success of Justice Bryan's leadership meant another seven years' lease of life to the old constitution, and it so aroused that party that it rose to new vigor. Oswald's *Gazetteer* vented its rage even more on the Constitutionalist leader than he did before, calling him the old "Midwife" that brought forth the constitution and had "taken the lead and ascendancy among the Censors." It was of no avail, for at the October (1784) election it is sufficient to state that an Assembly was chosen which elected John Bayard, Speaker, and Samuel Bryan, Clerk.

## CHAPTER XVIII

### THE GREAT CONTEST

1784

The two campaigns in one of the greatest and most picturesque and significant contests in American history, were now on in full force. The Bryan element now began to see the meaning of the Wilson plans through the national bank group and the great constitutional schools that were now discussing the granting of the power of the purse to Congress. They saw the Bank of North America as the Keystone in the new state and national arch, and they began systematic effort to pull that Keystone out.

First they issued proposals for a new "Bank of Pennsylvania" on January 19, 1784, as soon as they saw what the plan of that first session of the Council of Censors was, in its attack on the old constitution, and compelled the national bank to issue large blocks of stock to head it off. By February 10th, however, they had organized and applied to the Assembly for a charter; furthermore they instigated similar banks among their friends in other states. The Bank of North America fought them in a hearing on March 2nd, and 3rd, in which Mr. Wilson was pitted against Ingersoll, Bradford and Sergeant, on the plea of public credit being endangered, and, by the 16th, the request for the charter was withdrawn. This, probably more than anything else, was what brought Justice Bryan into the Council of Censors in April, and his success during the rest of the year and in the next October election bode ill for the national bank, for it was plain the new Assembly of 1784-5 would do things to that institution. It was now to be war to a finish.

Before entering upon that subject, however, it will be well to observe some changes in the Supreme Court. For



the first time since the new order, death removed the red robes of office from a member of this bench on December 11, 1783, in the passing of Justice John Evans, "third justice," as he had been described. It is not uncommon for a court to have a Justice of such recognized merit as to be colloquially regarded as the "Chief Justice," and Justice Bryan, had no McKean been on the bench, would have readily furnished an example of that kind. He was commonly recognized as next to McKean in ability even if he was "Fourth Justice." The death of Justice Evans, in any court of our own day, would have advanced Justice Bryan to the place of "Third Justice," but at this particular time, when the government was crowing over the results of the first session of the Council of Censors and a brother of the aggressive friend of James Wilson, Dr. Benjamin Rush, namely, Jacob Rush, was appointed to the vacancy, they saw to it that he succeeded to the place of "Third Justice," leaving Justice Bryan in his old status and with no increased friendship for Justice Rush. Consequently, to keep the peace, the Chief Justice, when occasion arose, as in *Nisi Prius* or criminal sessions, when the court divided, the Chief Justice would sometimes go with Justice Bryan and again with Justice Rush. For example, at the March and April sessions of the Oyer and Terminer Courts at Doylestown and Philadelphia it was the former, while at the Chester, Lancaster, York, Carlisle, Reading and June Philadelphia sessions, the Chief Justice had Justice Rush beside him. The autumn sessions, successively at Philadelphia, Doylestown, Chester, Easton and Reading, 1784, were held by the Chief Justice and Justice Bryan.

His service in the High Court of Errors and Appeals during 1784 began in the arched room of the State House on April 6th, when Chief Justice McKean, Judge Francis Hopkinson, Justice Bryan and Judge Miles constituted the bench, but they had no business and adjourned to the 28th when it embraced President Dickinson, Chief Justice McKean, Judge Hopkinson, Justice Rush and Justice Bryan. The case before them being from the Admiralty Court Judge Hopkinson withdrew, and the rest listened to Mr.

Ingersoll and Mr. Bradford, and affirmed the Admiralty decree. In June Judge Bryan was not present. At the September 20th term President Dickinson, Chief Justice McKean, Judge Hopkinson, Justices Rush and Bryan and Judge Wynkoop listened to James Wilson and Mr. Ingersoll, and Mr. Sergeant, and on the 21st received Judge Edward Shippen, under commission of September 17th, in place of Judge Miles; but in one case the Chief Justice and Justice Bryan withdrew. They did also on the 22nd when the rest listened to Messrs. Lewis, Ingersoll and Bradford, and on the 23rd the absent Justices were affirmed. On the 25th a full court sat, until Judge Hopkinson withdrew, and the rest listened to Messrs. Wilcocks and Sergeant; while on the 28th all were present (excepting Atlee always, as he was not in the court this year up to this date) except Judge Hopkinson. Justice Atlee was present on October 5th, as were all the rest except the President and Justice Rush. Mr. Lewis was the only counsellor. Everybody was present on the 6th except Justice Rush, but during a case presented by Mr. Wilson the Supreme Court Justices withdrew, returning again for one presented by Gouverneur Morris, when Judge Hopkinson withdrew. All the Supreme Court members were absent on the 7th and 8th, and on the 11th only Atlee and Rush were absent, as also on the 18th. There was but little business.

With all these activities Justice Bryan did not neglect his work as Treasurer and Trustee of the University during 1784. Encouraged by the first session Censors' report in January, Judge Hopkinson nominated James Wilson for a vacancy on the board, while Mr. Bryan nominated Rev. Rogers, but neither one was finally chosen, as Mr. Bradford's nominee, former Speaker John Bayard, won. By March 8th the University was in excellent condition, the Chief Justice reporting that the Philosophical School had 48; the Medical School 60; the Mathematical School, 43; the Latin School, 64; the German School, 30; the English School, 66; the Boys' Charity School, 62; and the Girls' Charity School, 29; a total of 402. The Chief Justice was made auditor of the Treasurer's accounts. On March 15th,

Justice Bryan was made Chairman of a financial committee, and on April 15th he nominated Thomas Miffin to take the late Dr. Bond's place on the board. As an instance of preparation for the Wilson element to win back the College property, in August it was ordered that the Treasurer be elected annually in December, and on September 11th, came notice from the Assembly that they should appoint counsel to defend themselves, McKean, Moore and Bayard being chosen. On October 16th, they considered the possibility of Norrington Farms as a future site of the University, and on December 8th, Justice Bryan was re-elected Treasurer by a majority. Justice Bryan was present at nearly every meeting.

Three days before the Council of Censors, led by Justice Bryan, made its famous report, from the old Congress room, the Assembly in the room above, with a very uncertain majority started to restore the College property, but lease the University with the property since acquired, and seemed to be able to do so by a vote of 28 to 25, on ordering a bill drawn. This enabled them on the following day to take up a revision of the test laws which was a very delicate subject, so near election, when its design was to remove disfranchisement of a considerable number. It was all a part of the great contest. On the 27th of September by a vote of 28 to 23 an emission and loan office bill covering £50,000 was referred to the next Assembly, but on the 28th, when a vote was taken on the test law revision, it was 25 to 25, and as Speaker Gray was casting the affirmative lot, 19 members rushed out of the hall and down stairs thus breaking up a quorum, and—the Assembly itself! The Bryan element, seeing the success of the Council of Censors, and thinking if the College property was restored, and the test laws revised, the next thing would be restoration of Proprietary estates, determined to stop it at all hazards.

The opposition were enraged beyond bounds. Indeed from the time Justice Bryan, in October, 1783, was mentioned as a Censor, until now, the public attacks upon him in the press, especially in the *Gazette*, and also in the *Gazetteer*, were of the most vitriolic character. "Z" on

October 8, 1783, in a public letter "To George Bryan, Esq.," etc., charged him with almost everything even to smuggling; while on September 1, 1784, after the Censors' report was issued, and for several issues thereafter, "A Citizen of Pennsylvania"—no doubt the same pen—in a public letter "To George Bryan, Esq., Censor-General of Pennsylvania," was even less restrained. This writer even makes the fantastic claim that Justice Bryan in 1776, tried to make the legislature a double chamber and hauled Judge George Ross out of bed at midnight to influence him in that direction! He charges him with being the father of the project to remove the state capital to the Susquehanna river—calls it his "darling project"—and the organization of new counties a means of holding and increasing his following. Never in newspaper polemics were two men more mud-bespattered in the most reckless language than were George Bryan and James Wilson, the two chief leaders on each side in this great contest. Justice Bryan did not openly, at least, defend himself, and James Wilson did so but once, and that was for public reasons. Both were skilful and profound public leaders, and had an implicit following. The one believed in the centralized principles of a single chambered legislature, much as the British and many political scientists do today; while the other stood for the political science represented by the state and nation in America. One led the country party and a certain part of the city, while the other led the more conservative element in favor of the checks and balances system. The one stood for the old state constitution and the Articles of Confederation and the other for a new state and national constitution. Indeed, Justice Bryan and his followers represented the attitude of those who today fear a League of Nations, while Mr. Wilson's position was like those who desire not merely a League, but a real international government. And this terrific contest involved not only Pennsylvania, but all of the states, and the financial system of the Confederation, centering in the Bank of North America.

Plenty of defenders of Justice Bryan arose. For example, "Junius," in the *Freemen's Journal*, who compared

him to Cincinnatus, or "Plebeian" whom the doughty Bryan reminded of the best days of the Roman Consul, stating that it was the glory of him and his associates that they went out of office poor. It remained for Judge Hopkinson, however, under the pen-name of "Projector" to interpret Justice Bryan's long defense of the old constitution, under both its old and new forms, as the desire to immortalize himself as its author or at least its preserver. For when, the October election, following the disruption of the Assembly by the precipitate departure of the Bryan element, brought that element back into control of the Assembly and so saved the constitution for at least another seven years, the whimsical artist-jurist, in the issue of the *Pennsylvania Gazette* of November 24, 1784, announced the discovery or invention of a mode of applying the art of the surveyor to portraiture. He showed how a man, wishing to make his will might, deed his land in such specifications as would, forever, have his portrait in its outlines. He gave detailed measurements, of which only the external boundaries need be given, for illustration:

"From an assumed point

"A, run a line S. 67 deg. 30 min. W. 52 perches to a point

"B, thence N. 5 deg. W. 64 per. to

"C, thence 7 deg. W. 36 per. to

"D, thence due W. 60 per. to

"E, thence N. 48 deg. E. 110 per. to

"F, thence N. 13 deg. E. 60 per. to

"G, thence N. 45 deg. E. 190 per. to

"H, thence N. 77 deg. E. 108 per. to

"I, thence S. 5 deg. W. 240 per. to

"K, thence the same course 120 per. to

"L, thence S. 78 deg. W. 180 per. to

"M, thence 30 perches to the place of beginning."

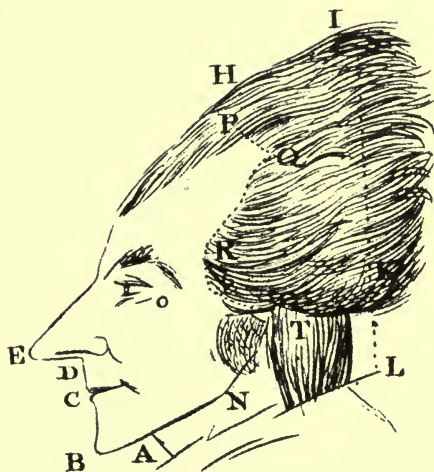
These, drawn 100 perches to the inch, would make a facial portrait—which, of course, everybody would recognize as his High Court colleague, Justice Bryan, in cartoon.

No drawing accompanied it in the *Gazette*, but when his essays were published some years later, he developed the article more and actually drew out the specifications into a cartoon of Justice Bryan, that even his own relatives acknowledged was a most excellent likeness, allowing for the humor of a cartoon.<sup>1</sup> The cartoon was designed to show that Justice Bryan was wishing to leave his political portrait in the constitution of Pennsylvania, which he had so doughtily defended under its old form and for whose new form he was responsible, and had now given it a new lease of life for at least another seven years.

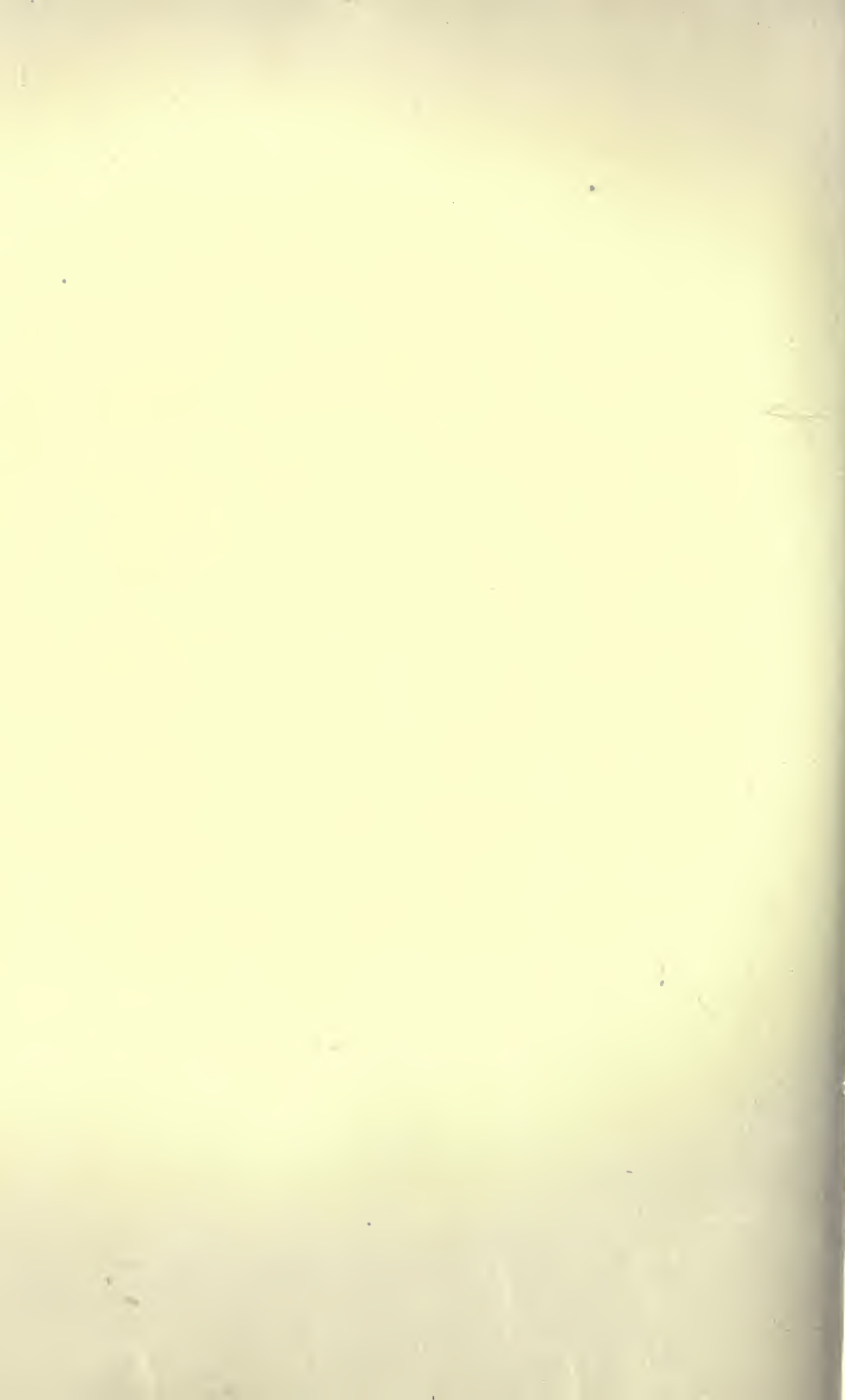
And the October election was truly a land-slide, for when the Assembly met in November and elected John Bayard, Speaker, and Samuel Bryan, clerk, the political line-up was shown on November 12, 1784, to be 43 to 15, in favor of the constitution and the Censors' report! The Bank of North America, the College of Philadelphia and the entire Wilson program were all in a most hopeless plight apparently, with the national bank as the chief one marked for decapitation. That big majority varied but slightly on all party questions, and on the 25th of the month, a committee was ordered to bring in a report on the Censors' recommendations. Various features of that report were acted upon, but the event of most moment was the paper money issue and the Bank of North America being forced to accept it. Justice Bryan said the issue was whether the currency should have state support or bank support, meaning of course that he proposed the former and not the latter. Then, on March 21, 1785, came the attack on

---

<sup>1</sup>There being no name mentioned in either of the articles, and it was certain that Judge Hopkinson, in 1784, would see to it that someone drew the specifications and passed it around among contemporaries who would instantly recognize it, there was a long period when the identity of the cartoon was wholly lost—nearly a hundred years indeed; for the present writer on the occasion of the presentation of a portrait of Justice Atlee to the Supreme Court rooms at Philadelphia in 1903, or thereabouts, asked Justice Mitchell if he had ever seen or heard of a portrait of Justice Bryan. He replied that some twenty years before he was in Charleston, S. C., and met United States District Judge George S. Bryan, who assured him that there was an excellent cartoon portrait in Francis Hopkinson's *MSS.* at the American Philosophical Society, in an article on *Surveying as Applied to Portraiture*. Justice Mitchell had been unable to find it, but the present writer was more successful not only in finding it in *MSS.*, but also in identifying it in the published *Essays*, in which the article and the cut were in separate volumes, with no mark of connection. The cartoon was published by the present writer in his *Life and Times of Thomas Smith*, in 1904, and it is reproduced here.



CARTOON OF JUSTICE BRYAN  
by Judge Francis Hopkinson in Hopkinson MSS. at  
The American Philosophical Society





the bank's state charter, to understand which, one must recall that the Congressional charter which made it the national bank was questioned as to the power of Congress to give it, a question which made the bank seek a state charter as well, in the several states. A Chester county petition headed numerous others, on that date, demanding that the Pennsylvania charter be repealed, which course, under the questioned value of the Congressional charter, was designed to destroy it entirely, as they did not believe a charter in another state, like the one this bank had in Massachusetts, would be legal. The prestige of the bank, nationally and internationally, was so great that nothing happened for a time, and soon after April 4th, when this bill was reported out for publication and public consideration, the Assembly refused the bank a hearing and adjourned. Mr. Wilson then made a public defense of the bank's national charter and also a plea for the State charter in a most able public pamphlet, the pioneer in American constitutional law.

On March 29, 1785, Justice Bryan wrote Justice Atlee about the Judge's salary bill, and other things: "This is well you say;" he writes, "but the paper money! There's the rub! It has too been damned by the Council before its appearance. Indeed there is reason to doubt; there is ground of apprehension. However, the constant activity of the bills by the payment of taxes of various kinds will stand instead of other supports, especially if the country people would pay the arrears. By the interest and weight of the public creditors it will derive some help; and the £50,000 loan money will I trust be deferred; if it come out at all.

—— The general dislike of the bank has at length come to a point. Petitions, mostly from the country, have come in and been received with correspondent ideas. Never did I see anything receive such favor. And those who are negative seem faint. Forty-one were for and nineteen against bringing in a bill to repeal the incorporating act. This affair has not been warded off by any prudence on the part of the bank. The opposition to the second bank, proposed in March, 1784, the opposition that was recently made to the funding bill &c., were all foolish interference and provoca-

tions. Yet the repeal, if deferred four months, will distress our merchants much. They can scarcely bring their enlarged affairs within compass. Indeed all discounts from this time must be small."<sup>1</sup>

On June 23, 1785, he again writes, among other things: "Dr. Jackson informs me that our negotiators in Europe have not been able to form a treaty of Commerce, save with his Holiness, the Pope. This prince actually solicited it by his nuncio at Paris, and is so just as to ask it on the foundation of perfect reciprocity. Congress have named Commissioners to examine the accounts of the late Superintendent of Finance [Robert Morris], which are printed in a folio. Our Comptroller General has been urging him to account with the State and has actually charged him in a statement 48,000 Dollars ballance, whereas R. M. says he owes nothing. Council have approved of this and Mr. Morris is reduced to appeal to the Supreme Court in 20 days or the charge will be fixed." "Mr. Morris," he adds, "can not let go his favorite the bank. It is said and I believe with truth, that a scheme of a new bank in the name of R. M. & Co. is in forwardness. Meanwhile he and his friends continue their opposition to the new bills of credit, which pass, however, with most people. The sums due the bank oblige the merchants to sell their goods at vendue for specie. In short the contention will be whether our paper credit shall be that of a bank or the public." "We have had a town-meeting," he continues, "concerning the ill state of trade and the British regulations. The doings of it are in the prints. Mr. Ingersoll has acquired great popularity by presiding at it. In general people are pretty well satisfied at the event. Mr. Morris' friends, fearing something they might not like, would issue, opposed it, and have rather suffered thereby with the people. They would have gotten credit and advantage by promoting it." "Diverse of our attainted Tories have latterly returned. . . . Mr. McClane moved in Council yesterday that they be taken up and imprisoned. . . . The Gov. of S. Carolina sometime last winter directed this to be done in that State.

---

<sup>1</sup> Atlee Papers, Congressional Library.

—— Letters just received from Kentucky assert that within three or four days the settlers would renounce Virginia, and that an experiment was soon to be tried whether the Spaniards would refuse them tobacco &c. passage to Sea, for if they did, a passage would be found before long." After referring to some bankruptcies, he says: "No measures have been taken to finish the treaty with the Indians, all of whom were not present last winter, but an order has been passed in Congress to purchase more of their territory. I view this as needless as well as mischievous. The Indians may pinch themselves of hunting grounds and the people would, in such case, spread sparsely and so as to be exposed; and would get out of the reach of government. The jealousy of Spain would be carried to the extreme—perhaps the Indians might be employed to restrain our progress into the wilderness. —— Congress are upon the subject of a mint. The making of copper money seems to be expedient to stop the importation of counterfeit half-pence from England. . . . I hope you will be in town before the 11<sup>th</sup> July when the Court of Errors sits. We hold a Court of Oyer & Term. here some days before the 11<sup>th</sup>, having five or six charged capitally."

The Assembly yielded under the force of Mr. Wilson's pamphlet on the Bank of North America, and on September 5, 1785, heard Mr. Wilson for the bank and Mr. Sergeant for the petitioners against it. The latter compared the national bank to that of England which was a government of aristocracy and where a bank controlled it always would be. He said this bank was bleeding the country to death. "Away with it—do not deliberate, but destroy it at once!" he cried. "Like Aaron's rod the bank swallows up all other paper." "There is no other way of up-holding the public credit but by demolishing the bank; therefore I say demolish it. We are not bound by any terms made by Congress—Congress are our creatures!" On the 13<sup>th</sup> they did demolish the Pennsylvania charter of the bank by a vote of 47 to 12.

This was a blow to the bank, indeed, but it was an equal blow to the Bryan party in that the effect upon public credit

caused a reaction in the October (1785) election and men like Wayne, Morris, Clymer, and Mifflin were among those returned. The result was that although Justice Bryan's son, Samuel, was again elected Clerk of the Assembly, presumably because he must have been a very able clerk, General Mifflin was made Speaker, and at the election of President of the Council, Dr. Benjamin Franklin was made successor to President Dickinson. Justice Bryan was out on the western circuit, but his son, Samuel, wrote him an account of it about November 1, 1785. "Pursuant to the advice of friends," he writes, "with a view to serve the constitutional interest; not with any hope of succeeding, I attended in my place as Clerk on Monday; and if I had before entertained any hopes, the appearance the first day must have destroyed them; for out of 36 members, who attended, the Republican party [Wilson's] counted 25. All the York members but 2 were in and those came next day. On Tuesday there wanted but 2 of a House. On this day the 4 Cumberland members appeared, but fortunately, as the event proved, did not bring their return; 2 of them asked the Sheriff for it (who it seems erroneously supposed himself the returning officer and had possession of it), he told them it was not quite ready, but advised them to proceed, as it would be in Philadelphia almost as soon as they would, for Counsellor Woods would set off the next morning; as the return must have been as complete when the Judges of Election closed it as ever it would be, this circumstance augured design. Wednesday morning Mr. Robinson's mother died, which prevented a house, there being but 49 without him, they adjourned till 3, afternoon; in this recess Mr. Smilie came to town, which made a quorum without Mr. Robinson. Mr. Woods, with the Cumberland return, had not arrived and the loss of 4 men was great. We were now in a critical situation; manouever was now recurred to: 2 members did not attend, which prevented a house. In the course of that evening and the next morning, 7 of our western friends came in, and, to crown all, Mr. Woods brought the Cumberland return: This gave us an accession of 11 votes. Thursday morning [they] formed

a house and proceeded to the choice of Speaker and Clerk, &c. As we had no one qualified to act as Speaker, but such as would have been too great a loss to us [to] spare from the floor, we run Genl. Mifflin; he, from an apprehension of our not being able to carry him, had declined the day before, but seeing us muster so strong, he consented after being pressed to serve. The Republican party pushed Geo. Clymer; the poll stood 33 for Mifflin, 29 for Clymer and 1 for Wayne. The vote for Clerk stood 33 for myself and 30 for Mr. Lloyd. The other party were confident to the last moment of carrying the Speaker and Clerk; even after the loss of the Speaker, they supposed that several who voted for Mifflin would vote against me; their disappointment was proportionate. The gallery had been filled from Monday by the Republican party; near 200 were constantly there, and, till Thursday, not one of our friends. This was a proof of the public opinion. The Northumberland return, I am persuaded, from the circumstances attending it, will be decided in favor of the 3 old members. There are besides these, 3 that are in contest; but [9 (?)] now absent, of them we have 5 or 6, one of ours we expect this evening." — "It is a glorious triumph after such great defeats and consequent insults in the lower parts of the State; much sweeter than if we had known of it sooner, as it gave the other party time to expose their views and exult in the extravagant manner they did."

On the 3rd, he again wrote: "My former letter gave you the state of things here at the time of the organization of the House; since then little important has occurred in the House. — We had expected a warm contest about the choice of the Vice-President; the Republican party had Mr. Hill in view and seemed to have it much at heart. We deemed the choice to be more important, as Dr. Franklin, from his great age and consequent infirmity, will probably attend Council but seldom, and therefore the Vice-President would be the active efficient officer. The majority we appeared to have, by the choice of Speaker and Clerk, did not discourage our opponents from the attempt, for they had 2 or 3 majority in Council. This being the situation, they

thought it their interest to go into the election as soon as could be done, before any more arrivals from the westward, as most of those expected would be inimical to them. On Friday it was proposed in the House to instruct a committee, which had been appointed for another purpose, to confer with the Council respecting the time and place of choosing a President, &c. Our idea was that the election would have been the following week, especially as some members of the other party spoke warmly against the measure 'till a set of rules had been reported and adopted by the House. However, at 5 o'clock in the afternoon of the same day, we found Council had settled everything for the election to be the next day at 11 o'clock A. M. The Officers of Government, Militia &c., &c., were all summoned to attend the ceremony. What made the matter look the more like design and manouever was that the members of Council of our party, who attended in Council, heard nothing of it formally, no motion being, no order publicly adopted. Mr. McLem overheard a whisper. The advantages to be gained by this covert and precipitate proceeding were these, I suppose: first, they judged a concurrent vote of the House and Council would, in the, then, present state of the members in town, give them a majority. Secondly, that the Constitutionals might not be agreed upon their man. But an incident happened on Friday evening that deranged all their plans and made their manouever useless; 2 of the western skunks arrived and report added a third; this was a serious event and not to be slighted. It induced them to call a cabinet Council, where it was determined to acquiesce in the appointment of Captain Biddle, as it would be of ill consequence to experience a third public defeat, which the accession of the 3 votes to their enemies made too probable to run the risque of.

"Yesterday the double returns and papers respecting them were, on motion, read, when Mr. Whitehill made a motion which had been previously prepared in writing, for the purpose of procuring from Northumberland County, by a messenger sent there, all the documents relating to the election. The situation of this matter is nearly this:

the 3 old members had 8 votes more than Maclay and others, but the Maclay Judges, looking over the list of voter's names in the other district and the tally papers, found that the ballots exceeded the names 10; this was the cause of the double return. But to obviate this apparent deficiency, the Judges, of the district where it happened, have attested that 12 of the inspectors and clerks voted after all others had done, and, not thinking it material, omitted to enter their names; in addition to this the depositions of 5 persons are come to hand, who voted and whose names are omitted; and it is said 4 or 5 more will be procured.

"Mr. Whitehill's motion was strenuously opposed, upon the ground that the business was of so complicated a nature that the House could not, on special motion, adopt the proper mode of coming to a decision on it; that the business ought, in the first instance, to be referred to a committee. A great deal of finesse was practiced, but we had the superiority in argument, and after a long and well supported debate on both sides, the question was carried against the commitment, some of our people, not seeing the tendency of the motion, supposing either mode would answer equally, voted for the commitment, yet we had a majority of 34 against 32. Our opponents were much impressed at the loss of this question.

"Judge Hopkinson has again petitioned this House to rectify the error he alleges to have happened in the law instituting the Court of Admiralty sessions. The petition was read the second time today and referred to Mr. G. Clymer, Mr. Hannum and Mr. Hubley. Some time had passed, when Mr. Fitzsimons moved that the committee be instructed to bring in a bill defining and establishing the jurisdiction of that court and to repeal all the former laws: this was opposed by Smiley, Whitehill and Finley &c. as precipitate; that the fact was not yet ascertained that any error had taken place; that, even allowing it to be the case, the House ought to be satisfied of the propriety of making the alteration requested. Fitzsimons, Gen. Wayne, Geo. Clymer, Hannum &c. urged it vehemently. The question

being put, there appeared but 19 for it. This was a sensible mortification.

"Genl. Mifflin makes an excellent Speaker; he preserves the most perfect order and decorum; even Genl. Wayne is obliged to submit, not a whisper or shifting of places during debate or while business is going on. ——— The family are all well. ——— I remain, Yours Affectionately, Saml. Bryan."

Justice Bryan's son, Arthur, aged twenty-four, also wrote him his version of it on the same day: "You have already heard of Sam'l getting re-instated, notwithstanding the ungenerous attempts of many to put him out: the votes stood 33 Sam & 30 Lloyd. The Constitutionals also carried the Speaker 33 to 29 in favor of Mr. Mifflin & against G. Clymer. There was 1 for Genl. Wayne, so that G. Clymer must have voted for himself. General Mifflin makes a most excellent Speaker. It was feared at first that the best orators would be among the Aristocratists, but we are agreeably surprised to find the contrary: we have therefore the best advocates, the greatest numbers & justices on our side.

"The affair of Northumberland election came on yesterday. Mr. Whitehill moved to have the papers sent for; the others could not oppose in a direct manner a thing so obviously necessary, but strove to waste time. Accordingly Mr. Hannum moved to have the papers then in the House committed. Every man they had that could speak did his utmost; their argument was plausible: they said but a few hours would be lost. Mr. Finlay made the most animated, ingenious speech I ever heard. The house divided: yeas for committing 32; against it, 34. Amongst the former were many of our friends, such as Mr. Luts, Mr. Lincoln [Abraham 1st], Mr. Will, & I believe, Mr. Robert Brown. General Irwin is as staunch as Mr. Whitehill.

"The 11<sup>th</sup> inst. is fixed for electing Delegates; some of the Constitu[tionali]sts wished it for tomorrow, but were easy about it. Mr. Fitzsimons moved to have it on the 11<sup>th</sup> & carried by a very small majority. We thought no more about it, but seeing the exultation of the others, out of



doors, of having gained some great point, we judged it could be nothing else but the above. — This day a motion was made to form a committee to bring in a bill to repeal every act or law about the Judge of the Admiralty—to give him new powers, &c. &c. Yeas about 25; Nays, 40. — My mother & brothers and sisters long for your return from the very rainy journey you are on. — I remain your most affectionate son, Arthur Bryan.”<sup>1</sup>

It was on November 23, 1785, however, before a real test of strength appeared, and that was on the proposal to revise the test oath laws, and the vote showed 42 to 23 in favor of revision. But this attack on the keystone of the situation, the bank, was also, as it was intended to be, a blow against the Wilson resolution, of April 18, 1783, which had now been before the legislature for over two years, designed to give Congress the power of the purse, was so great that its friends began to be impatient at the apparent slowness with which it approached a conclusion. This led Congress, now in New York, on July 11, 1785, to call for a report of progress; whereupon it was found that it had been adopted in whole or in part by *eleven states!* This showed an overwhelming result of Mr. Wilson’s proposal to give the union the power of the purse. It was this that precipitated action against the bank and also encouraged the bank group to fight for the October election of Assembly and restoration of their charter. This showed the great contest now to be nation-wide, and Justice Bryan must have recognized the menace of this national tide that threatened to engulf the old constitution of Pennsylvania; for the men who would give the union the power of the purse would give it a constitution with checks and balances; and, if they did, then the principle of checks and balances would replace those of the old constitution of 1701–1776, for which he had given so much of his life. The Wilson schools of nationalism in the thirteen legislatures and in the Congressional one were the source of that rising tide.<sup>2</sup> And these

<sup>1</sup> Bryan Papers, Hist. Soc. of Pa.

<sup>2</sup> For full treatment of this great theme see *The Life and Writings of James Wilson*, Vol. 1, by Burton Alva Konkle.

reports of progress gave encouragement to all those everywhere who had called for a national constitutional convention, and even to those who were satisfied merely with the Wilson amendment and the accompanying commercial one of 1784. New reports were rapidly called for during the winter of 1785-6: one on February 15, 1786, showed that Delaware and North Carolina had accepted in full, the one conditional on unanimity and the other, North Carolina, unconditionally. Six States had complied as far as the commercial one of 1784 was concerned, but not yet on the general funds part. Pennsylvania adopted both on condition that she do the collecting, but would agree if the rest did. So that only Maryland, Rhode Island, New York, and Georgia were not in line in some degree. In short, seven States had so acted that, if six others acted likewise the amendment would go into effect immediately, and the union would have the power of the purse. Not three weeks later another report was made and on March 3rd, Congress urged the States to make it final. In the Virginia legislature a mode of hastening was proposed the previous fall, in a call for a convention, but it was January, 1786, before it was adopted by that body, and then only for the commercial phase of 1784, but by May 1786, General Washington was taking a hand, in urging action upon his correspondents. This was partly because in March, New Jersey had refused to pay any more requisitions until the Wilson resolution was adopted and the union be given import powers! Pennsylvania's Assembly agreed to the Virginia invitation on March 21, 1786, and on the 23rd a repealer of the bank repealer was ordered!

The effort to pull the keystone out of the campaign arch was in a fair way to fail. It proved to be a greater contest than many in it had realized. The repeal-of-the-repealer fight became the very heart of it and it was a great contest that ensued in that room above the old Congress room, wherein the followers of Justice Bryan fought valiantly against the bank group who had so long followed the lead of Mr. Wilson. About three-fifths of the bank stock, or 1235 out of 2176 shares were held in Philadelphia,

and about two-thirds of the remainder was held in Holland, only seven states beside Pennsylvania owned any and only five counties outside of Philadelphia. This tremendous contest showed what a hold the old constitution and Justice Bryan had on Pennsylvania, however, for on April 1, 1786, after all of their great debates the bank lost by a vote of 41 to 28. Ten days later the Assembly chose the men to go to the Annapolis convention proposed by Virginia, and these gentlemen were destined to a wide awakening, for they were to hear from New Jersey's delegates that they wanted no little commercial appurtenance, but a real program that would enable the Union to have full power to do what it ought to do! This is typical of the wide-spread changes in the field of political science in America caused by these discussions for the past three years in all thirteen state legislatures. New Jersey, however, was convinced not only as Congress was, that the Wilson resolution and its companion were the best things yet devised; but, as shall appear later, were sufficient; they wanted these amendments, but they wanted but little else. The bank group wanted these as a stepping stone only. Like General Washington, they wanted much more; they wanted all that ought to go *with* the power of the purse as well; and most of the leading continental figures had known that ever since 1776. The bank group, led by James Wilson, wanted a government for the United States such as New York or Massachusetts had for those respective states: a single executive, a double legislature, and an appropriate separate judiciary, with powers suitable to national existence and the power of the purse to effect it. They wanted a real government with teeth in it, and none wanted it more than James Wilson, General Washington and Robert Morris. So Justice Bryan knew what to expect, in large measure, and he and his following were as afraid of the monster for the nation as they were for the state of Pennsylvania.

Meanwhile he had the usual experiences of life in his private and public capacity. In 1785 he was living on Vine Street between Second and Third Streets, where also lived his eldest son, Samuel, who had been Clerk of the As-

sembly for the past two years—both terms of one controlled by his father's party and one not so well controlled, but enough to keep the bank dead for the time being. William Rawle was in the second block southward; Dr. Rush was in Second Street; Dr. John Redman was also in Second near Arch; State Treasurer Rittenhouse was on Arch and Seventh Streets, almost in the country; Morris lived on Market between Fifth and Sixth Streets; Gouverneur Morris on Market between Second and Third; Oswald at the old Market and Front Street Coffee House; Charles Wilson Peale, the artist, at Third and Lombard; Mr. Sergeant, on Arch between Third and Fourth; James Wilson, on Chestnut between Fourth and Fifth; Speaker Mifflin lived on Vine Street, a square below Justice Bryan; General Wayne stopped with Mr. Delaney at the City Tavern in Second Street; Robert Whitehill made his home at a boarding house in Fourth Street; Mr. Findlay was with a minister's family in Fourth Street and John Smiley near by in the same thoroughfare; Attorney-General Bradford was in Third between Market and Arch; Judge Hopkinson's court was in Race, between Fourth and Fifth Streets; Provost Dr. John Ewing on Arch Street; Ex-Speaker John Bayard on Arch Street between Second and Front Streets; President Franklin in Market Street;—all in 1785, but in '86 Justice Bryan lived in Third Street.<sup>1</sup>

It is quite evident Justice Bryan had a wide correspondence at this period in his Vine and Third Street homes. One from Joseph Gardner, one of his followers in Congress, dated New York, March 19, 1785, is illuminating: "The fate of the founding bill, I am likewise informed of. I am pleased that it passed as it did, but would much rather it had passed without any discrimination. I have my fears concerning the fate of the paper money. Should the bank give it a credit, that will promote its efficiency and perhaps their fears for their charter may have its weight with them. ——— I have seen a petition to the Assembly published in the Philada. papers and republished here against the Bank.

---

<sup>1</sup> White *Philadelphia Directory*, 1785, and certain legal documents among the Bryan Papers in the Historical Society of Pennsylvania.

What number of signers had it? Has it been presented? Will the Assembly take any steps upon [it]? The bank in this city is not very secure; there is a general suspicion that banks are all conducted too much upon principles of favoritism. After repeated applications they have been refused a charter. — A few days ago an act for the abolition of slavery took place here, nearly upon the principles of the Pennsylvania one. The country party in the New York Assembly are a majority and generally carry their measures in opposition to their Senate and their Council of Revision, as they are called. — Rhode Island has passed the 5 per ct. in a limited manner, to be collected in their own way and by officers of their own appointment. They have appropriated eight thousand dollars out of it to pay their proportion of the interest of the foreign debt, and for this purpose have directed it to be paid to the order of Congress. The residue is to be applied in paying the interest of the domestic debt, to such of their citizens as are public creditors, and the redemption of their state notes. This is not satisfactory to many of our gentlemen, but less is said about it than would be, owing to the difficulties a similar bill finds in its passage through the legislature of this state. Numbers have petitioned the Assembly in favor of it (principally citizens) notwithstanding many of the leaders of the house are determined to give it every opposition in their power.

“Our grand committee of ways and means have not yet reported, but it is probable that a requisition will be made of three millions dollars or thereabout nearly upon the same principle as last years, for exigencies of the current year. Facilities, as they are called, or, in other words, notes for interest, will be received in payment of two-thirds certainly, and more if the interest of the public debts mounts higher.

“The late Indian treaty has put the U. S. in possession, according to several calculations which I have seen and made, of near twenty-five millions acres of land in the western country. Congress wish soon to avail themselves of this fund to extinguish as much as possible of the domestic

national debt. The arrangement for disposing of this property has been, some days ago, committed to a grand committee of one from every state. We have met frequently upon this business, but have concluded nothing. Many important questions arise upon this subject. How large are the States to be? How bounded, whether by natural marks or by parallels of latitude? Is it to be granted regularly, one joining upon another, where lands not arable don't intervene? or are the purchasers to be suffered to roam at large (as in Pennsylvania) and take up as much and where they please? If the tracts are fixed, how large ought the largest and how small the smallest be? How much should the price per h<sup>d</sup> acres be? Or should there be different prices according to the value of the lands? Should there be any reservations of hundreds, or manors for the use of schools or other public uses? Salt springs and licks, and what has usually been called royal mines—how ought they to be disposed of?

“The land speculators already smell a rat and expect fine picking; many of them are here and waiting with anxiety the event. There will be a swarm at the land offices in this new country; many have already applied. Another treaty will be held this summer, in June perhaps, at Port St. Vincent. both for piece and purchase. If this should succeed, as is expected, thirty or forty millions more will be added. We are informed that the Indians in that country are disposed to sell and many of them mean moving over the Mississippi. ——— The question upon Mr. L—— has not been mentioned for some time. We received your pamphlet; we have kept it agoing with those who understand French. ——— Nothing is said of the Wyoming affair. Do the Assembly mean to take it under consideration? We wish to know in order that we may govern ourselves accordingly. ——— The representation is generally complete, Georgia alone unrepresented, only one attending.”<sup>1</sup>

Another correspondent was Congressman Wm. Henry, another of his followers, who writes from New York on March 25, 1785: “The principal business now before Con-

<sup>1</sup> Bryan Papers, Hist. Soc. Pa.

gress is the disposing of the lands lately purchased and the making of a second purchase. Much time has been spent by a committee of one from each of twelve states on the first and it is probable the lands will be sold by districts of ten or twelve miles square to the highest bidder, above such point as Congress may fix for the right. A number of districts will probably be put up to sale in the different states, perhaps nearly in proportion their demands. The commissioners are authorized to make the second purchase to the Mis[siss]ippi and as the Indians have opened those lands for sale, there will probably be little difficulty in purchasing them. Commissioners are appointed to make a treaty with the Creeks, Cherokees &c.

——— "The place for holding the Federal Court for Massachusetts and New York is not yet determined. Longchamps affair was to have been brought forward this day, but is again gone off by an agreement to Monday next. Your French pamphlet came very appropos, as' it has now [gone] through a number of able hands since and is now on Mr. [———]. —— What are our Assembly about? Have they passed the law for regulating elections? If this is not done, they will not hold their seats another year."<sup>1</sup>

Another New York letter of the following June 4, has some interesting comments by Congressman Dr. David Jackson: "You have seen the land ordinance. I was but a little in the house when it was ready to pass. It does not please me fully; it was a compromise between the prejudice of education (if I may use the expression) in the eastern and middle states with respect to their original mode of locating their lands, the eastern people contending for the propriety of locating by townships & the middle and some of the southern folks being in favor of a division in small tracts, so as to suit the circumstances of all classes. I think also that the price is fixed too high. We attempted on the day of passing to reduce it to two-thirds of a dollar p. acre, but it was carried in the negative. I will thank you for your candid opinion on this ordinance. You have heard

---

<sup>1</sup> Bryan Papers, Hist. Soc. of Pa.

of the North Carolina cession of western territory to the United States in June, 1784: They gave Congress until the first of June, 1785, to accept of the cession; but previous to that time revoked the act of June, 1784, & forbid their delegates in Congress to execute the deeds of cession agreeable to that act. The people of that western part of North Carolina, which was included in the act of cession, have since declared themselves an independent state by the name of Franklin & placed the act of cession as aforesaid for so doing & have sent a memorial to Congress praying to be received into the federal union. This naturally bro't the act of cession of North Carolina on the floor; indeed, I cannot conceive why it had not been accepted before the act revoking made its appearance; it was contended by almost all the *gentlemen of the law* that the act of cession was still good (the act revoking notwithstanding) provided Congress accepted within the time limited in said act & that the execution of a deed in form by the delegates of that state, which they then refused to do, was not necessary to vest the title in the United States, for that this was done by the act itself fully and completely. It was therefore moved that Congress now accept the cession as aforesaid; this was overruled on the score of policy—that as Congress had delayed to accept the cession until the time limiting the acceptance was on the point of expiring & that it had not been taken up at all, until a memorial made its appearance from a part of that state (styled, by some, in rebellion) praying to be admitted into the Federal union—that taking the matter up at this late hour & as things now stood, would be taking an undue advantage of No. Carolina, rather tending to favor a separation at any time of a state, whenever a few turbulent people were so disposed,—that the measure would very probably irritate the state to so great a degree as to induce them to withdraw from the union,—that it was best for the present to use lenient measures,—that in all probability No. Carolina would in a very short time, again make the desired cession, for that she could not possibly long hold those people beyond the mountains subject to her jurisdiction. The matter then ended with a resolution, as



you will have seen in the public papers, recommending to No. Carolina to reconsider this matter & act on liberal principles &c. No. Carolina, I think, makes but a foolish figure in this business; she made a sort of an Indian gift, which she had scarce parted with before she called it back into her possession. I have no doubt but she will at her next session of Assembly, confirm anew her former cession, for from all accounts, the people, beyond the Apalachian mountains, which have now declared themselves an independent state, will never again return under the jurisdiction of No. Carolina, nor is it in the power of that state to force a compliance.

“Congress have not yet finished the requisition on the states for the year 1785; it ought to have gone out at least five months ago & at this time some preparation ought to be making for the business of 1786; however 1785 must precede. In determining the requisition for this year on the report of a grand committee for that purpose, there is 30,000 dollars called for, to be appropriated for the purpose of erecting Federal buildings. Whenever this comes on the carpet, the propriety of erecting those buildings will also become a subject of discussion. I confess I have not yet been able fully to make up my mind on the subject, having never heard arguments pro and con on this business, but am rather inclined to give my negative. I query whether, in this business, I should be joined by my colleagues, especially Mrss. P[eti]t & W[ilso]n. The latter is expected every day, when our delegation will be full. I can easily account for the prejudices of those two gentlemen in favor of a measure of this nature. Be pleased, as soon as convenient, to give me your opinion on this subject; it will have great weight with me in forming mine. I am much pleased to hear the paper money seems to keep its ground & is in pretty general circulation. The Bank stopping all fresh discounts is greatly in its favor.

“You have Don Guardaqui with you. We look for him here shortly. We have had letters announcing his arrival & rank. The navigation, full and free to the United States, of the Mississippi must of course become a matter of

enquiry & subject of discussion with his court. That is a matter the United States can never give up; otherwise our territory in that quarter would be of little consequence.

"The Continental Treasurer would wish to stay in Philadelphia, altho' he, together with all the other officers of Congress residing there, have been directed to come to New York. From the present disposition of Congress, he will find it absolutely necessary either to come to New York or resign."<sup>1</sup>

About a week later, on June 10, 1785, Justice Bryan himself wrote a letter to John Whitehill, giving a legal opinion requested, which is one of the few that have been preserved, and is an excellent sample of his style, his flowing penmanship and his legal learning. It is dated at Philadelphia: "Sir, you were pleased to ask my opinion, concerning the trial of the Indian, named Mamachtagwin, who is prisoner at Pittsburgh, charged with the murder of one, if not two white-men, whose names are not fully given; that is to say, how, where, & by what authority the homicide should be enquired of and adjudged.

"The letter you put in my hands from Robert Galbreath, Esquire, is so very bare of circumstances, that it will be difficult to consider the case with the precision it ought. Even the county where the fact was perpetrated is not given. But if it be supposed, that it happened within Westmoreland, another question arises, was it *remote from inhabitants*? For if it were, then the trial should be in the county of Philadelphia. Otherwise it must be in the proper county. By what you dropt about this matter, I surmise, that it passed on the north or northwest of the Ohio, not far from Pittsburgh, consequently not remote from inhabitants, as the Act of 1744, page 200, of Ross & Galloway's compilement of the Acts of Assembly of the late Province, loosely has it. And I am clear that if there be any doubt on this hand, the doubt should be decided in favor of trial by the vicinage, which is according to common law. I am of opinion that the Indian, if he demands

---

<sup>1</sup> Bryan Papers, Hist. Soc. of Pa.

it, has a right to a party-jury, half foreigners. Wm. Penn, the founder, in 1683, established something of this nature in respect to damages done by Indians; and I have on my memory some traces of a trial formerly at Chester of an Indian for rape, when six Indians were called in. The law, however, concerning *mediatem linguæ* does not require, that the aliens be of the nation to which the accused belongs.

“Your difficulty does not, however, arise upon the point stated & discussed already. It is rather upon the authority of the President & Council to issue a special commission to persons who are judges of the Supreme Court, to hear & determine concerning this, or other similar cases. The Justices of the Supreme Court above two years ago were questioned by the President & Council on this head & I then gave my opinion in the affirmative, with reasons for it. To this I beg leave to refer. There need little be added now, unless that it appears by the Act of 1774, above cited, that the Judges of the Supreme Court were not, at the passing of it, supposed to be the only justices of oyer, terminer & goal delivery, competent to try capital offenses. The practice was not unknown before the revolution & capital punishment was inflicted at Bedford since the revolution by virtue of a commission of this nature.

“Mr. Galbreath’s idea of sending up the death warrant before trial is extravagant. But by the common law, the court, which tries, should pronounce judgment, & award execution thereof also, & the Act for the Advancement of Justice, Section 6<sup>th</sup>, enables the Judges to award & order execution to be done. The reference to Council, & the warrant from the hon[orabl]e board for the actual execution is but an usage, introduced by a clemency, & more suitable to the state of Pennsylvania, of formerly, when the Province consisted of three small counties, than it is at present. It may be easily dispensed with by Council; nay, the Judges ought, upon proper cause, to disregard it. In England a similar usage is confined to Middlesex; for in the other counties, the Judges direct the executions, but on

special occasions respite till the Supreme Executive shall interpose, if it be proper.

"The Act for setting off the county of Westmoreland directs that all courts for said county be holden in the house of Robert Hanna, which I suppose is at Hanna's Town. This should be the place of judgment, if it be not altered by some later law.

"It would be prudent to make the commission, if the Council see fit to issue one, special to the very case & to limit the power to the trial of the Indian, now in custody, by name & the homicide as already committed. The names, indeed, of the person or persons slain should also be specified; but perhaps those are not transmitted.

"The above is my present view of the subject. What I have said is rather hurried, as you wished for an early answer. Perhaps the County Courts of Common Pleas & Sessions of Westmoreland are more expressly fixed at Hanna's house, than the Supreme & Oyer & Terminer for capital matters."<sup>1</sup>

Another paper, an answer to two queries: 1. Whether any person may be commissioned, specially, as Justices of Oyer & Terminer in Pennsylvania? and 2. Whether Justices of the Peace can be appointed by the Council, unless the freeholders of the district first elect a double number?—throws light on his legal methods. In answer to the first he says: "The Act of May 22, 1722, for establishing courts, appoints that the Justices of the Supreme Court, who then held at the pleasure of the Governor, should be Justices of Oyer & Terminer. This might, perhaps, have been construed as excluding any other, had not long usage under this law interpreted otherwise. The Judges of Westminster are not the only Judges of Oyer & Terminer in England, & ever since the reign of William, the Third, when independent commissions and salaries were established for them, no such idea has been entertained. Nothing has passed in Pennsylvania, as I know of, at or since the American Revolution to introduce any alteration upon this point. It may perhaps be suggested, that this authority, in the Council,

<sup>1</sup> Bryan Papers, Hist. Soc. of Pa.

may be abused, as it enables that board to select Judges, in a particular case, to hear and try, with design to prevent a fair and equal hearing; but such doings ought not to be presumed. They would be too odious. I am [of] opinion, that there may be cases in which such commissions would be not only legal, but proper. As to the commission issued lately to certain persons in Westmoreland & Washington counties with blanks in it, and the filling into it of the names of the accused, after the sealing and issuing of the said commissions (tho' the names, therein inserted, had been ever so clearly expressed) I take this to be void and that such a writing gave no authority whatever."

His reply to the second said: "By the 30<sup>th</sup> section of the Constitution, if the freeholders of any district incline to have a Justice of the Peace appointed, in any other mode than the mode therein directed, the legislature may gratify them; but that the Assembly, upon the neglect or refusal of the freeholders to choose, may authorize the Executive branch to appoint, is not clear. Perhaps the Council, upon such neglect, might commission Justices of the Peace, till the people resume their rights; under the general power given them in article 19<sup>th</sup>, to supply all vacancies. This power of the Assembly, however, to alter the mode at the desire of the freeholders, remarkably distinguishes the case of these Magistrates from Sheriffs & Coroners. In respect to these last, as there is but one for each county, the Council must immediately supply the failure. These last are necessary for the complete organization of judicial authority; whereas, tho' two or three districts, in a county, neglect or refuse to exercise their privilege of electing Justices of the Peace, the defect would be attended with no great inconveniency.

"Another idea arises upon starting this question: and that is, whether the power given, in the 9<sup>th</sup> article, to the legislature to incorporate towns, boroughs, cities and counties, includes not that of constituting mayors, aldermen & burghesses, with the authorities of Justices of the Peace? I am inclined to think not, for such corporations were before the institution of these justices; and many communities of this

nature subsist in England, wherein they have no Justices of the Peace under the charter. The city of Westminster, for instance, is governed by an High Steward and burgesses, with a bailiff, who acts as a sheriff. This corporation has no Justice of the Peace within it. For the Justices of the liberty of Westminster are specially appointed by the Crown. Yet, the High Steward holds a court with the jurisdiction of a manor court; and inquiries of nuisances &c. 'By Holt, Chief Justice, tho' a man be *mayor*, it doth not follow that he is a Justice of the Peace; for that must be by a special grant in the charter.'—Raymond, 1030. As therefore the legislature may erect corporations of towns, without constituting Justices of the Peace, it doth not follow, that by the power to incorporate towns, &c., the legislative power must necessarily be enabled to constitute Justices of the Peace in a mode different from the 30<sup>th</sup> article. The Assembly may adopt in the place of such corporations, the mode of the constitution. Or if the major part of the freeholders, in such town, apply to the Assembly, in such manner as, that it is manifest that they desire another mode of appointing those Justices to be established; as to them, then the Legislature may direct, that annual permanent magistrates with the authority of Justices of the Peace be chosen by the town or other district seeking the alteration as an improvement of the plan in the constitution. Besides if the power of incorporating cities, towns, & counties necessarily include right to give the authority of Justice of the Peace to a mayor, alderman or burgess, thus might the Legislature wholly evade the 30<sup>th</sup> section of the constitution, by incorporating every county in the state, for certain purposes, & thus covertly wrest the choice of these magistrates from the people, without their consent.

"How far those things have been attended to in reviving the charters of Lancaster and Chester, or in framing a municipal government for Carlisle, I am not informed. If the major part of the freeholders of these towns have not, previously, expressed their consent to the deviation from the 30<sup>th</sup> section of the constitution, I cannot see how their burgesses can be safe in acting as Justices of the Peace.

The magistrates concerned would do well to enquire into this.

“There was an act of Assembly passed in 1777, authorizing the Council to appoint Judges of the City Court. As these officers exercise the powers of Justices of the Peace, in hearing and determining concerning breaches of the peace, it was always doubted whether this was strictly right. But the Council has hitherto been careful, as I understand, to nominate none to this station, but such as were Justices of the Peace for the city and county already.

“Another law which was made 31<sup>st</sup> August, 1778, whereby the Council was directed to appoint Justices of the Peace in case of the neglect or refusal of the freeholders of any district to elect according to the constitution, seems to have been an unadvised stretch of legislative power, not consistent with the frame of government. But it has not, as I know, been acted on, in any instance.”<sup>1</sup>

Fortunately, a letter of Justice Bryan's to his wife about this time from Carlisle exists, altho' dated with only May 31st, without the year, which illustrates another phase of his character. “My Love,” he begins, “I arrived here on Monday morning last and on Wednesday I sent a letter down to Lancaster to be forwarded. I then acknowledged receipt of your son Jonathan's of Friday before. We have just done here, and tomorrow proceed to Chambersburgh, 32 miles to the westward of this town. The week has been fully employed and much business done. Mr. Chief Justice talks of leaving us & returning from this, yet I am not sure he will.

“Last night Genl. Irwin of this county returned from N. York, by way of Philadelphia, by whom we have all the news which are going.

“Dr. Davidson & wife are well & give their compliments. It rained last evening heavily & again this morning, which makes the streets very filthy. The roads tomorrow will be wet.

“This place affords no news. Genl. Thompson's fine place, somewhat beyond Carlisle was this day sold by the

---

<sup>1</sup> Bryan Papers, Hist. Soc. of Pa.

Sheriff for £1100; called very low & not long since rated at £3000 & more. He died insolvent. ——— I am, my Dr., with love to all, most affect<sup>y</sup> yours, Geo. Bryan. ——— P. S., I have enjoyed & do enjoy perfect health. The mare is very orderly. We have fires evening & morning almost daily. [To] Mrs. Bryan, Philadelphia."<sup>1</sup>

During these years, of 1785 and '6, Justice Bryan's various activities did not prevent his usual devotion to the University of Pennsylvania at Fourth and Arch Streets. In February, 1785, he was placed on the committee on real estate and was present continuously the rest of the year except on April 27th. The institution was growing, with 327 enrollment: 38 in the collegiate classes; 51 in the Latin school; 49 in the English school; 47 in the German; 53 in the mathematical school; and 64 boys and 25 girls in the charity schools. Mr. Sergeant had succeeded Mr. Matlack as trustee, and on August 30, 1785, Chief Justice McKean, Justice Bryan and Dr. James Hutchinson were appointed to handle the bill before the Assembly. On December 7, 1785, Justice Bryan was made chairman of the committee on faculty salaries to carry out a plan proposed on November 12, 1783. His attendance was almost equally good in 1786, when he was absent from board meetings but three times. On January 7th, a society of young lawyers were allowed to begin meeting in the Fourth Street building, but a mutual improvement young men's society request of the same kind was pigeon-holed; while the Medical Society was favored. On March 8th, he was made chairman of the committee on leasing of Norrington Farm and Mills; and on December 18, 1786, he became chairman of the finance committee and also that on ways and means. It will thus be seen that he was, as treasurer, leading the financial affairs of the University; and that the institution was growing.<sup>2</sup>

<sup>1</sup> Bryan Papers, Hist. Soc. of Pa.

<sup>2</sup> The book of receipts for disbursement kept by Treasurer Bryan for the University was in possession of S. S. Bryan, Titusville, Pa., in the late 1890s, when he gave it to the University of Pennsylvania in Provost Pepper's time.

In the Rush MSS. 41, p. 93, at Ridgway Branch of the Philadelphia Library a letter of George Bryan's says: "He [Dr. Rush] was a professor in the college and might have been so in the University [before the consolidation, is meant]. He was elected by the Trustees by as good a majority as Dr. Ewing, but he insulted the trustees in his manner of declining. When his friends after-



In ordinary terms, one might expect to find the record of Judge Bryan's court activities, especially in the Supreme and High Court of Errors and Appeals, in Pennsylvania judicial reports, such as are now taken for granted in this country, and even then in use in England. But, as a matter of fact, no attempt to gather, edit and publish reports in this state was made for nearly a half dozen years after the year 1785, now under consideration. British reports had been used before the revolution, and the latter event made mere trial and decision quite difficult enough without looking to the future. In order to better understand this situation, a look ahead of four years may be taken, to 1789, when, Alexander James Dallas, a brilliant member of the bar of the Supreme Court, first began to collect materials for a first volume of court reports, and he found it necessary to include even the Common Pleas courts of Philadelphia to find enough for any volume. He was barely able to get thirty-three pages of cases before the revolution, the earliest being in Chief Justice Allen's time in 1754, and hardly more than one opinion by Chief Justice Chew can be found. Mere statement of the case and decision fills the space. After the revolution the first report of Supreme Court cases is those of 1779, and but few even then. And those were trying times when mere decision, not elaborate opinion, was desired; and these the imperious, well-educated Chief Justice McKean almost invariably furnished, when present, and they were vigorous, drastic and unmistakably to the point, as though he were engaged in making precedents, not following them. They were consequently brief. Also a spirit of justice is discernible that reminds one of the mental tone of a Marshall. Few even of these are preserved, comparatively, and no formal opinions of other Justices, long

---

wards proposed him he had but one vote. The station is now full, but the person has not yet absolutely accepted." He also says, speaking of Dickinson College: "Believe me, sir, it is a scheme of dividing the Presbyterian interest, and preparatory to transferring back the University to the narrow foundation which it formerly stood on; to dismiss the able and worthy Provost Dr. Ewing and to turn us over to a difficult, if not impracticable attempt to build up a new fund. . . . It is manifest to all here why the idea should have been set up by Rush." Of this, Dr. Rush says: "He [Bryan] is a man of too much understanding to believe it himself." After the manner of the day Dr. Rush calls the Bryan group: "the secret junto," "the pale-faced faction," and even by the favorite term of both sides the name of a well-known malodorous animal.

enough to be characterized as opinions. The first, in which Justice Bryan had a share is an opinion signed by the whole court in 1784, and requested by the Supreme Executive Council.

This was a case in which the executive questioned the decision of the court; and although the court answered the queries, they plainly said they did not "hold themselves bound to assign any reason for their judgment; and when they do give reasons, it is always in public. [Kel. 54.] This is mentioned, that the present proceeding may not be drawn into a precedent."<sup>1</sup> As Chief Justice McKean and Justices Bryan and Rush signed it and there is no evidence of what part in it Justice Bryan had, it may be disregarded.

The first reported expression of Justice Bryan's is in another trial of 1784, namely, the celebrated Longchamps case, due to an attack by Charles Julian de Longchamps on Monsieur Marbois, secretary of the French legation and consul. In this Chief Justice McKean gave one of his most elaborate opinions, but as he presented it to the jury, Justice Bryan remarked: "The distinction between a consul and a member of legation is not warranted in this case; for Monsieur Marbois never ceased to be the latter. As secretary of Legation, his authority descends from a high source, his commission being made out in the same form as the minister's, and signed in the same manner by the King, his master."<sup>2</sup>

No case is reported for 1785, in which his own expression is given; but in 1786, the Abolition Society brought a case before Justice Bryan, who, on the following day, was joined by the Chief Justice, claiming freedom of a mulatto brought into the state. The jury brought in a verdict for the owner. Such results did not always happen in Justice Bryan's courts, as may be seen from the long public letter by this defendant, Mr. Philip Dalby of Alexandria, Virginia, of March 27, 1786, in the *Virginia Journal* of March 30th. It is entitled "*A Caution To All Travellers To Philadelphia From The Southern States*, in which he describes

---

<sup>1</sup> Dallas p. 93.

<sup>2</sup> Dallas 124.

being brought into "Judge Bryan's chambers," and subsequent action that was fought so hard on both sides that, although Mr. Dalby won, he had as keen a realization of the dangers of entering Philadelphia with a slave that he wished to warn his fellow Virginians of the danger, as it took him nearly a year and a half to get a verdict.<sup>1</sup>

During 1785 and 1786 Judge Hopkinson joined the newspaper war on the Constitutionalists or Bryan party; but he did it in satirical skits that shrewdly pilloried Justice Bryan and the whole Supreme Court. One of these was a rejoinder on Thomas Paine's article in defense of the Bank of North America in 1785, by "Uncommon Sense," as he styled himself. In this he analyzed sovereignty as composed of power and will, the former lying in the Assembly, and the latter in the people; and then he went on to show how that principle had been corrupted, as he said, by an early custom of the Assembly in seeking advice of the Justices of the Supreme Court, when a difficult question arose; and these questions became political as well as legal and the Justices thus usurped the will of the people, so that the will part of sovereignty "is lodged with certain learned and worthy persons, who are not members of that house, and who are not vested with the power of actually making laws." "On this singularity in our political system," he says, "is founded a doctrine, not long since advanced by learned men, which, if established, must fully answer the purposes of those who discovered it, viz. that assemblies, juries, and such confidential appointments, are nothing more than *legal machines* [harking back to his skit on juries] designed to give legal sanction to the views of those, who from superior abilities and official greatness, are best qualified to influence and direct them."<sup>2</sup> He shows how sovereignty has become, so to speak, an "out-of-doors influence." He says the constitution has changed: they now have two houses, an upper house in the State House, and a lower house at the *Indian Queen* in Market Street, "and the judges of the Supreme

---

<sup>1</sup> Dallas 179. *Virginia Journal*, copy in the Bryan Papers at the Hist. Soc. of Penna.

<sup>2</sup> *Miscellaneous Essays*, Hopkinson, Vol. 2, p. 231.

Court form the legislative council. This council, in conjunction with the lower house, is the repository of the *will* of our sovereignty, having a direct influence upon the acts of government whilst under deliberation. And the council have, by *precedent*, acquired a separate and exclusive right of *revising, altering, and amending* the laws *after they have been enacted and published*. And thus hath our bill of *facts* introduced a form of government very different from that designated in our bill of *rights* and original constitution." This was to counter on the point made by the Bryanites that the national bank was an *imperium in imperio*.

In 1786, he turned his free lance on the Supreme Court itself, in a skit that professed to be a new style of legal report. The bench is composed of Chief Justice I, and Justices You and Him, "Him" being Justice Bryan, who gives the decisive statement as to just what the law is, while the Chief Justice does the brow-beating of grand jury, lawyers and everybody else. The final decision was that of Judge Him, because the Chief Justice was on one side and Judge You on the other—the case being left under advisement in doubt!

This was the situation of the great contest in the winter of 1786–1787, when Congress was considering the recommendation of both Annapolis convention, and also Virginia, that a national constitutional convention be called, to amend the Articles of Confederation; and Virginia, New Jersey and Pennsylvania had agreed to it by the mid-winter holidays.

## CHAPTER XIX

### GEORGE BRYAN AND A NEW NATIONAL CONSTITUTION

1787

When the election of October, 1786, was over it became evident that the Wilson Republicans had a safe majority, although at the first occasion of a test, namely, on November 9th, the margin was represented by 28 to 23. General Mifflin was again elected Speaker and Samuel Bryan was *not* elected clerk, while the aged Dr. Franklin was called to the office of chief executive. A better test was had on December 1st, when the margin was 32 to 25. The real test came, however, on December 13th, when the restoration of the Bank of North America charter came up, and this gave 33 to 28, in favor of it. This was modified on the 28th to 31 to 30, which showed that some of the Republicans were for making a new and more limited charter; and when some of these limitations were formulated it became evident that the 33 to 28 margin was about the normal majority. This made it plain that, while the Wilson element was in the majority, the Bryan element was so very strong that, with its new able floor leaders, like Findlay, Whitehill and Smiley, every inch of the ground was to be contested. This became still more evident on March 3, 1787, when, what was said to be Justice Bryan's "darling project," the building of a State House at Harrisburg, was carried by a vote of 33 to 29. On March 17th, however, the bank was restored, in a limited way, by a vote of 35 to 28, and on March 21st a reconsideration of the new capital program was secured, and reversed, by a similar vote 35 to 27.<sup>1</sup>

Fortunately, Justice Bryan has left some impressions

---

<sup>1</sup> Justice Bryan was re-commissioned as a member of the Supreme bench of Pennsylvania on April 3, 1787, by President Benjamin Franklin. This commission, in 1906, was in possession of George Bryan, Esq., of Richmond, Va. The whereabouts of the commission of 1780 is not known.

of this period, looking back at it, from a later date: "Previous to the appointment of the Convention there seemed to be a general wish for a more efficient confederation," he writes in reply to some queries addressed to him. "The public debt was unpaid and unfunded. We were deluged with foreign goods, which it was evident might have paid large sums to the continental treasury, if duties could have been generally laid and collected, and at the same time the levying such duties would have checked the extravagant consumption. Whilst Congress could only recommend measures and the states individually could refuse to execute them, it was obvious that we were in danger of falling to pieces.

"The opposition of Rhode Island to the five per cent had made a deep impression upon people's minds. A desire of strengthening the hands of Congress was very general; but no particular scheme seemed to be digested, except that most men seemed to wish Congress possessed the power to levy duties on imported goods. At this time the Convention was proposed and members were elected for Pennsylvania about the beginning of the year 1787;—I do not remember the particular time. Very little bustle was made and little or no opposition. What has been called the Anti-Constitutionalist or Aristocratic Party then governed our councils and the representatives in Convention were chosen almost wholly of that party and virtually from the city of Philadelphia.

"The Convention met without much expectation of anything very important being done by them till towards the close, although some intimations were made, beforehand, by some foolish members (as they were thought) of the Society of Cincinnatus that nothing less than a monarchy was to be erected and that the people of Massachusetts were driven into rebellion for the very purpose of smoothing the way to this step by their suppression. Little regard, however, was paid to these speeches till towards the close of the session of the Convention, when surmises now spread from other quarters that something injurious to the liberties of the people was about to be produced, These surmises

were again contradicted in some degree, and the Convention rose with favorable prospects.

"I am not able to give a particular state of trade in Pennsylvania in 1786," he continues in reply to another question. "But in general it was in a very unfavorable situation. Our navigation was almost wholly in the hands of foreigners, chiefly English; and a great part of the negotiation and sale of merchandise was in the same hands. The numerous classes of tradesmen who depend on commerce and particularly those who depend on navigation were destroyed. There was no anarchy nor any considerable degree of licentiousness in Pennsylvania. Party spirit was high; but much more violent on paper than anywhere else. The Tories, with the spirit of chagrin and resentment which flowed from their disappointments and what they called persecution (chiefly arising from the Test laws) had taken side with the Anti-Constitutional or Aristocratic party in opposition to the Constitutionalists, who had before held the reins of government. But, on the whole, we were much more peaceable and orderly than our neighbors, who read our newspapers, believed us to be. And Pennsylvania, all along, besides supporting her own government, had given most effectual aid to the United States, particularly in money.

"The ruin of the commerce and navigation of the United States," he continues in answer to still another question, "was owing to a concurrence of causes. Some of the northern fisheries had been long nourished by bounties from Great Britain before the war; and those bounties were now withdrawn. We had a deluge of money at the close of the war, which raised the prices of our commodities at home and the vast diminution of industry increased this mischief. Trade, during the war, had fallen into the hands of successful, but ignorant adventurers, who did not understand commerce. The English manufacturers, at the end of the war, were vastly overloaded with those kinds of goods which were calculated for the American markets, and they crowded them upon us by the hands of their own clerks and agents, in such immense quantities, that it was impossible

for us ever to pay for them. These goods were either sold for small prices, or turned out without discretion and never paid for. But the exclusion of our ships from so many of the British and French ports and the want of Mediterranean passes have contributed to the destruction of our navigation more than all other causes.

"As to the paper money of Pennsylvania," he continues, "which has been issued since the war, it was made in 1785 for the purpose of establishing funds for payment of the interest to public creditors and to lend to such as were under the necessity of borrowing, at a time when there were very few private lenders. I am not well acquainted with the detail of its funds, quantities and times of redemption. It has too much fluctuated in its credit, and has been as low as 33½ p. cent discount. In Jersey the same motives for issuing paper money prevailed and its fate has been similar. I understand it is now at two-thirds of its nominal value."<sup>1</sup>

It will be seen that Justice Bryan, like many others, did not perceive the tremendous significance of a combination of events, such as the great feeling aroused by the Spanish treaty that threatened to close the Mississippi and so cripple southern operations in the west, when rival northern and southern states were projected; the rapid agreement of the various states for a convention; and especially the remarkable acceptance by the states of not only the Wilson resolution of 1783, but even more of its companion resolution of April 30, 1784, so that with a few slight changes by states the latter could have gone into operation within a month after the Annapolis meeting. Justice Bryan and his party seemed to consider this merely the possible success of these two amendments to the Articles of Confederation, while men like James Wilson and his sympathizers saw in it something far beyond that. Justice Bryan thought he knew the tremendous conservative power of his own party in Pennsylvania and like elements in the other states, and he

---

<sup>1</sup> Paper among the George Bryan Papers at the Historical Society of Pennsylvania. The part here quoted is but about one-third of the whole paper, but the rest pertains to a slightly later period, in connection with which it will appear.



did; but the national bank crowd and their sympathizers over the land proposed the greatest fight of their lives for a real national government far beyond the amendments of 1783 and '84. Justice Bryan failed to measure the great power of the past three or four years, of the thirteen schools of nationalism inaugurated by the Wilson resolution of 1783. He has stated how little was expected of the convention by him and his party, and how they rested in that fancied security until the new constitution was published on September 17, 1787. Then he realized, as New Jersey did, that it went so far beyond the Wilson resolution that it made them gasp! They began to learn that the hated leader of the "Aristocratic" party of Pennsylvania, James Wilson, had fought and wrought out a real interstate government that had as real national power as a state had state power. The secrecy of the convention during the long summer months at the State House, from May to September suddenly became menacing and the dangers of a real super-state loomed large in their minds. Furthermore they learned it was so terrible that leading members from Virginia and New York had refused to sign it! Some news of the fierce forensic debates on the great question began to trickle out and they found that New Jersey, who wanted so much more than anyone else at the Annapolis convention, was frightened at what she finally got! The mystery of that long secret summer session now peopled the new instrument with all manner of evil spirits.

"When the federal constitution was proposed to the people," writes Justice Bryan, "the desire of increasing the powers of Congress was great, and this object had a mighty influence in its favor. The popularity of Genl. W[ashington] and Dr. Franklin had still more. The people in the towns, who depended, in any measure, on trade, expected great relief from it. The gentlemen of the late army, and the tools of the aristocracy, were loud in its support; and as the chief opposition to it was believed to arise from such [in Pennsylvania] as belonged to the Constitutional party, the whole body of the old Tories, a numerous and wealthy set of men, joined in its support. There is too

much reason to believe that some men among us had deeper views [for a monarchy?] than they chose to declare and wished a government even less popular than the one proposed; but in Pennsylvania they have been very reserved on this head. The opposition was very powerful and their language was for adopting the constitution and procuring amendments afterwards.

"The writer of this," Justice Bryan continues, "had confined his views of alteration to be made in the Confederation to a mere enlargement of the powers of Congress, particularly as to marine affairs.<sup>1</sup> He thinks the experiment ought at least to have been tried, whether we could not have proceeded under a Confederation of independent states, before we proceeded to consolidate all power in one general government.

"The Convention sat in the State House, and debated in private. It has nevertheless been said, and I suppose is beyond doubt, that the members were much divided, and that the present form of constitution was agreed to as a compromise, when they had almost despaired of agreeing upon any one.

"When the system was published," he continues, "some writers in the newspapers stated many objections to it. The party in opposition were the old Constitutional Whigs [the Bryan party] for the most part. Numbers of those, however, and especially in the towns, joined in supporting the new federal constitution."

Then he analyzes the character of the support in detail: "The Cincinnati were in support of it. The civil officers were threatened in newspaper publications, if they should oppose, and were mostly in favor of it. Monied men, and particularly the stockholders in the bank were in favor of it. The merchants [were] in favor of it. Lawyers—the greatest part in favor of it. Divines of all denominations, with very few exceptions, in favor of it. They had suffered by paper money. Men of letters, many of them, were opposed to it. Whigs—the majority of whom

---

<sup>1</sup> This of course was the amendment of 1784, so that it does not appear that the Wilson amendment of 1783 was approved by Justice Bryan, at least so far as his own expression is concerned.

opposed to it. Tories—almost all for it. The women—all admire Genl. W[ashington]. Mechanics—such as depend on commerce and navigation, in favor. The others divided according to their former attachments to the revolution and constitution of Pennsylvania or their prejudice against them. Sea-faring men followed the mercantile interests and were strenuous in favor of it. Creditors were influenced in favor of it by their aversion to paper money; yet some were opposed to it. Debtors are often creditors in their turn and the paper money had great effect on men's minds. The public creditors were much divided, according to their former predilections and attachments. The counties nearest the navigation were in favor of it generally; those more remote, in opposition. The farmers were perhaps more numerous in opposition than any other set of men. Most townsmen were for it. The foreigners were chiefly connected with the mercantile people and were in favor of it. Even the foreign seamen were made useful to the support of it in Philadelphia."

He then describes the peculiar reversal in party names that it occasioned in Philadelphia. "The party names, before the Convention sat, were Whigs and Tories, which names were wearing out; and Constitutionalists and those who called themselves Republicans, and who were also called Aristocrats and Anti-Constitutionalists. In this last class were included most of the merchants, most of the monied gentlemen, most of the gentlemen in the late army and many of the mob in towns.

"The name of Federalists, or Federal men, grew up at New York and in the eastern states, some time before the calling of the Convention, to denominate such as were attached to the general support of the United States, in opposition to those who preferred local and particular advantages, such as those who opposed the five per cent duty, or who withheld their quotas of contribution to the general treasury of the United States. This name was taken possession of by those who were in favor of the new federal government, as they called it, and opposers were called Anti-Federalists.

"Those in opposition," he continues, "seem to have had no pre-concert, nor any suspicion of what was coming forward. The same objections were made in different parts of the Continent, almost at the same time, merely as they were obviously dictated by the subject. Local ideas seem to have entered very little into the objections.

"The evidence of a preconcerted system, in those who are called Federalists, appears rather from the effort than from any certain knowledge beforehand. The thing, however, must have been easy to them from their situation in the great towns, and many of them being wealthy men and merchants, who have continual correspondence with each other.

"The printers were, certainly most of them, more willing to publish for, than against the new constitution. They depended more upon the people in the towns than in the country. The townspeople withdrew their subscriptions from those who printed papers against, and violent threats were thrown out against the Antis and attempts were made to injure them in their business.

"Letters were frequently intercepted, and some of them selected and published by the Federalists. Private conversation was listened to by eavesdroppers. Pamphlets and newspapers were stopped and destroyed. This was the more easily done as most of the towns, even down to the smallest villages, were in possession of the Federalists. I can say nothing about the post office.

"In Pennsylvania the business of ratification was extremely hurried. The Assembly voted, if I remember right, to call a convention for its ratification before they were officially notified of its being recommended by Congress; and the election was hurried through before it was generally known what was doing. Many, even in the counties not very remote, were totally uninformed of any election being intended before it was finished.

"In the state Convention"—to allow this narrative to anticipate somewhat—"the behavior of the Federalists was highly insolent and contemptuous. Out of doors, even in Philadelphia, their behavior was more moderate after the

election for members of Congress, than before. The election had discovered a degree of strength in the Antis, which they did not expect and which nothing but surprize and the accident of extreme bad weather, which was unfavorable to the collecting of people scattered thro' the country, could have got the better of. There is one instance of violence, a short time before, which was not generally countenanced.

"There was a secession from the legislature for the purpose of preventing measures from being precipitated. Some of those seceding were made prisoners, insulted and dragged back, by the Sergeant-at-Arms and a mob of assistants.

"The minds of the people in Philadelphia were highly inflamed against the opposers and some of them were unquestionably overawed; some of them injured. Nothing perhaps checked this spirit of outrage so much as similar instances in Cumberland county, Hutingdon county and others, and a discovery of the real strength of opposition.

"The adoption of the Constitution by North Carolina was frequently asserted and published in pretended letters. Other letters were fabricated and published. . . .

"In general, it may be said, that Col. Oswald was almost the only printer who published in opposition in Philadelphia and that he has been injured in consequence.

"The printing presses," Justice Bryan says in conclusion, "were notoriously the great instruments of the American revolution."<sup>1</sup>

The constitution was completed and sent to Congress in New York on the 17th, Monday, and the following day James Wilson and his colleagues went across the hall, where the Assembly were in session and it was read to them. On Wednesday, 19th, it appeared in the press, and on the 28th, while Congress was voting on it, a motion was made in Assembly to provide a ratifying convention. Justice Bryan was in the gallery and his lieutenants, Whitehill, Findlay and others fought the measure (which contained a blank date to be filled in later and so was not complete), but fought in vain a majority of 43 to 19. They adjourned to

---

<sup>1</sup> The George Bryan Papers, Historical Society of Pennsylvania.

4 o'clock, at which time all but one of the 19 were absent, making two less than a quorum. The Sergeant-at-Arms was ordered to bring back enough for a quorum and it was done. Public demonstration treated this as equivalent to the state's adoption of the constitution itself.

Justice Bryan and his followers, as they read the instrument, saw that it not only transformed the confederation into a nation; but, because it did, it would also destroy their beloved old state and provincial constitution under which, in its original and modified form, they had lived for eighty-seven years, nearly a century! The Bryan group had publicly warned the Federalists so early as last July that they would oppose any change in the Articles of Confederation that would affect that state constitution and on October 10th, they again publicly stated that their opposition was because it not only destroyed the Articles, but would "annihilate our own constitution." This was after Mr. Wilson, at an Assembly nominating convention on October 6th, at the State House had made the first public exposition of the new instrument. The sixteen seceders had issued a statement on September 27, 1787, complaining that the state's delegates hadn't represented the land owners; that they were all of one political party which was against the constitution of Pennsylvania; that they exceeded their powers, which were only to amend; that it was so bad that three of the convention refused to sign it; that it was voted on before Congress sent it; that the new government is too expensive; that it has three branches; that it will reduce the states to mere corporations; that it gives the power of taxation to Congress; that the liberty of the press is not provided; that it contains no declaration of rights; that it allows a standing army in time of peace; that it abolishes trial by jury in civil causes; that the judiciary will destroy the state judiciary; that the election to both houses is for too long a time. Col. Oswald of the *Gazetteer* intimates that this was not written by any of the sixteen, but by a "person," which, with him, always meant Judge Bryan.

But the day before Mr. Wilson's State House speech, there appeared in Col. Oswald's *Gazetteer*, the only paper,

as Justice Bryan has said, which would allow both sides to be presented, a paper—the first of a series—by the chief opposer of the new national constitution in Pennsylvania, and one of the ablest in the United States, under the title *Centinel, No. 1*. These papers at once took rank, on their side, with *The Federalist* papers on the other. They were immediately attributed to Justice Bryan more than to anyone else, and, except the authorship of the first paper, which appeared in the *Gazetteer* of October 5th, the day before Mr. Wilson's opening speech, the writer is not positively known even yet. Of the first paper, however, Justice Bryan's son, Samuel, now a man of twenty-eight, and of much natural ability as his father's confidential aid, has left positive statement as to his own authorship of that particular paper. In a letter to George Clinton he says: "I have not the honor of being personally known to your Excellency, but . . . I flatter myself that in the character of Centinel I, I have been honored with your approbation and esteem."<sup>1</sup>

It is not the purpose here to reproduce these papers, since Justice Bryan was, in all probability, only consultant and aid to his son in their preparation, for there can be as little doubt that Samuel Bryan was the author of them all, as that they expressed in fullness and accuracy the sentiments and convictions of Justice Bryan. The papers were not sent to Oswald because he was a friend of Justice Bryan, for the reader does not need to be assured he was just the reverse—a bitter enemy; but Col. Oswald was a real journalist,

<sup>1</sup> From a letter of Paul Leicester Ford, quoted in McMaster and Stone's *Pennsylvania and the Federal Constitution*, p. 7, footnote. Mr. Ford intimates that the Belknap Papers II, 24, 35, give ground for thinking that Col. Oswald was also a writer of them, but a careful study of that reference fails to reveal it; it refers to him as printer, not author. *Centinel* is a characteristic Bryan spelling, (not Sentinel); and his use of one of Justice Bryan's favorite words "artifice" is in keeping. As Samuel refers to the first, positively, as his, one must accept it; and yet there can be no question that, with the intimate relationship in public affairs between father and son, George Bryan's counsel and aid were a part even of that paper. As to the rest, there is a legal knowledge in some of them, there is no reason to believe Samuel Bryan possessed. And as the *Federalist* papers were written by more than one, so *Centinel* may have answered for more than one writer. The papers are so uniform in expression, however, that one must come to the conclusion that Samuel Bryan, as his father's representative and with his father's knowledge, was the author of them all. Some of the paper's use of epithets, already made familiar, in some cases, by Col. Oswald, cannot be used against Samuel's authorship, for Judge Hopkinson used "midwife" and other terms which Oswald had made popular. The Clinton Papers of the period of this letter were destroyed in the Albany capitol fire of 1911. *Centinel*, later, says that he alone is responsible for these papers, which would seem to settle the matter.

with the courage of his convictions, and gave both sides the use of his pages. Furthermore he was a stormy petrel and dearly loved a fight. *Centinel*, No. 1, begins: "Mr. Oswald: As the *Independent Gazetteer* seems free for the discussion of all public matters, I expect you will give the following a place in your next.

"To The Freemen of Pennsylvania. Friends, Countrymen and Fellow Citizens.

"Permit one of yourselves to put you in mind of certain *liberties* and *privileges* secured to you by the constitution of this commonwealth, and to beg your serious attention to his uninterested opinion upon the plan of federal government submitted to your consideration, before you surrender these great and valuable privileges up forever. Your present frame of government secures to you a right to hold yourselves, houses, papers and possessions free from search and seizure, and therefore warrants granted without oaths or affirmations first made, affording sufficient foundation for them, whereby any officer or messenger may be commanded or required to search your houses or seize your persons or property not particularly described in such warrant, shall not be granted. Your constitution further provides 'that in controversies respecting property, and in suits between man and man, the parties have a right to *trial by jury*, which ought to be held sacred.' It also provides and declares '*that the people have a right of freedom of speech and of writing and publishing their sentiments*, therefore *the freedom of the press ought not to be restrained*.' The constitution of Pennsylvania is yet in existence, as yet you have the right to *freedom of speech*, and of *publishing your sentiments*. How long those rights will appertain to you, you yourselves are called upon to say; whether your *houses* shall continue to be your *castles*, whether your *papers*, your *property*, are to be held sacred and free from *general warrants*, you are now to determine. Whether the trial by jury is to continue as your birth-right, the freemen of Pennsylvania, nay, of all America, are now called upon to declare."

No one familiar with Justice Bryan's writing but can see the Bryanesque ear-marks in both style and verbal ex-



## PHILADELPHIA.

MR. OSWALD,

*As the Independent Gazetteer seems free for the discussion of all public matters, I expect you will give the following a place in your next.*

TO THE FREEMEN OF PENNSYLVANIA.  
*Friends, Countrymen and Fellow Citizens,*

**P**ERMIT one of yourselves to put you in mind of certain liberties and privileges secured to you by the constitution of this commonwealth, and to beg your serious attention to his dissenting opinion upon the plan of federal government submitted to your consideration, before you surrender these great and valuable privileges up forever. Your present frame of government, secures to you a right to hold yourselves, houses, papers and possessions free from search

\* \* \* \* \*

Besides, it cannot be supposed, that the first essay on so difficult a subject, is so well digested, as it ought to be;— if the proposed plan, after a mature deliberation, should meet the approbation of the respective States, the matter will end; but if it should be found to be fraught with dangers and inconveniences, a future general Convention being in possession of the objections, will be the better enabled to plan a suitable government.

“WHO’S HERE SO BASE, THAT WOULD A BOND-  
MAN BE?”

“IF ANY, SPEAK; FOR HIM HAVE I OFFENDED.

“WHO’S HERE SO VILE, THAT WILL NOT LOVE  
HIS COUNTRY?”

“IF ANY, SPEAK; FOR HIM HAVE I OFFENDED.”

CENTINEL.

A “CENTINEL” PAPER  
by Samuel Bryan, son of Justice Bryan,  
showing beginning and ending



pression in this paper, as well as the rest. *Centinel* then makes his appeal through a free press to juries, and takes up the new federal instrument. He deprecates the frenzied favor Philadelphia has suddenly shown for the new constitution. "If ever free and unbiased discussion was proper or necessary, it is on such an occasion." Critics ought to be encouraged, "for the science of government is so abstruse, that few are able to judge for themselves." They may become followers of the "artful and designing." The revolution has removed the conservative influence of older governments, where the spirit of the common law resists innovation. The wealthy have attributed all our woes to the present confederation, and by gaining the aid of two men [Washington and Franklin] "in whom America has the highest confidence," they seek domination. He thinks the goodness and zeal of the one has been imposed upon and the weakness and age of the other. He then attributes much to Mr. Adams' book, which he outlines, but asserts the new instrument is extravagantly beyond those ideas. "This hypothesis supposes human wisdom competent to the task of instituting three co-equal orders in government, and a corresponding weight in the community to enable them respectively to exercise their several parts, and whose views and interests should be so distinct as to prevent a coalition of any two of them for the destruction of the third." He says no such government has ever existed—even Great Britain is only theoretically so. Other principles must be used: "I believe it will be found in the form of government, which holds those entrusted with power in the greatest responsibility to their constituents, the best calculated for freemen. A republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided." He says "The highest responsibility is to be attained in a simple structure of government, for the great body of the people now steadily attend to the operations of government, and for want of due information are liable to be imposed upon." "But if, imitating the constitution of Pennsylvania, you vest all the legislative power in one body of men (separating the executive and

judicial) elected for a short period, and necessarily excluded by rotation from permanency, and guarded from precipitancy and surprise by delays imposed on its proceedings, you will create the most perfect responsibility; for then, whenever the people feel a grievance, they cannot mistake the authors, and will apply the remedy with certainty and effect, discarding them at the next election. This tie of responsibility will obviate all the dangers apprehended from a single legislature, and will best secure the rights of the people."

*Centinel* then turns his attention to the new constitution, which he thinks "a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed." He lights upon the "general welfare" clause, which, bound to "internal taxation" and a "standing army in time of peace," is a gigantic engine, scarcely worse than the over-powering judicial sections, and all clinched in making it "the supreme law of the land!" There, in elections, the states are completely ignored, a "melting down into one empire." The senate is to be composed of "the better sort," "the well-born," etc. This senate has a Delaware with as much influence as a Pennsylvania, and the President becomes either the head of a senatorial junto or its minion. Here is "in practice, a permanent aristocracy." There is no provision for freedom of the press, no trial by jury in civil cases, and, worst of all, the Supreme Court has appellate jurisdiction "both as to *law and fact!*" He says they claim that the only other alternative is ruin, but despotism is ruin. He proposes another general convention, reminding one of the board of Censors.

The October election gave no hope to *Centinel* and his friends, so on the 24th he issued a second paper—*Centinel No. II*—this time in the *Freeman's Journal*. In this he opens with an eulogy of the freedom of the press, which together with a bill of rights and other features the new constitution omits. The "secrecy" of the Convention was dictated by the genius of aristocracy. The unequalled patriot, Washington, is not infallible, nor the other splendid names. Montesquieu and Dickinson have warned against lethargy before dangers. Consideration should

precede approbation. He pays his respects to Mr. Wilson's speech of October 6th, referring to his "quibble" on "corporation" as applied to states and other subjects, showing that the states' loss of "purse-strings" will cause their decay. There is a wealth of legal knowledge in this paper that sounds very much like Justice Bryan, rather than the son, so that one is inclined to feel that, even though the son wrote "No. I," the father must have written "No. II." He cites the case of loss of jury trials in Sweden and the attempt of Governor Colden of New York in 1764. He attacks the judicial structure in a keen way and the standing army, as well as the combination of senate and executive in many ways, and draws attention to the power of the President being greater than that of the British King. He tells Mr. Wilson that the opposition is composed of a respectable yeomanry throughout the union; "it comprises many worthy members of the late convention and a majority of the present Congress." He warns against "such detestable patriots" leading into "the jaws of despotism and ruin."

It would seem as though Mr. Wilson's speech of the 6th had *Centinel's* paper of the 5th in contemplation, as *Centinel No. II* did his of the 6th of October. The election of members to the Ratifying Convention on November 6th showed the friends of the new constitution so much in the lead that *Centinel No. III* appeared two days later, in the *Gazetteer* this time.<sup>1</sup> "For the sake of my dear country," he writes, "for the honor of human nature, I hope and am persuaded that the good sense of the people will enable them to rise superior to the most formidable conspiracy against the liberties of a free and enlightened nation, that the world has ever witnessed." *Centinel* saw with a clear eye the wonderful power of the United States and he was afraid of this new thing, as almost a half of the people of the United States were; and his fears were based on the tremendous power of his political enemies, Mr. Wilson and the national bank group. He said it was a momentous occasion. The very men who are pushing for adoption hardest are the ones who

---

<sup>1</sup> It was written on the 5th.

"fabricated" it; "aristocratic juntos" of "well-born" who tried to humble "upstart equal liberty." "What" could not be accomplished in the several states is now attempting through the medium of a future Congress," he says and attacks the nature of Congress and the usurpation of powers by the Convention, all despotic "as the Venetian aristocracy." He compares them to Machiavel and Cæsar, who put forward form without substance. They assume to command ratification without amendment power—a statement that is not unlike the present day senatorial demand for reservation and amendment to the League of Nations! He points to the haste used, and compares favorably the Censors of Pennsylvania which act every seven years. He notes that the delegates to the Ratifying Convention were pledged beforehand, as though they were afraid. He again attacks the power of Congress, and, among other things, says: "The militia of Pennsylvania may be marched to Georgia or New Hampshire," and compares them to a Prussianized soldiery. He attacks the slave article and the three-fifths rule with a keenness to be expected from the author of the state abolition act. He wonders at the Quakers enduring it. He expresses regret that he has not space to say something on government spread over so great territory, and does not do so because "Brutus," a New York writer, has done it so well. He pleads for "this remaining asylum of liberty."

The Ratifying Convention had been in session in the room above the Declaration room ten days and had heard Mr. Wilson's great introductory exposition and even had occasion to register a test vote of 44 to 23, when, on November 30, 1787, *Centinel IV* appeared, this time again in the *Gazetteer*. In this he treats of taxation, giving a good résumé of the history of taxation in Pennsylvania, especially, attempting to show that the sudden and heavy taxation of 1782 and its lack of success should not be attributed to the confederational weakness, but the greatness and suddenness of this taxation. He shows the Swiss have not complained and given taxing powers to their confederation. Congressional control of commerce and import he thinks is enough power to add to Congress, and furthermore he thinks

that was all the people expected of the late Convention. He again draws attention to the secrecy and mystery which enshrouded the Convention, to have this "spurious brat received as the genuine offspring of heaven-born liberty." He says "the genius of liberty is on the eve of her exit." He pays his respects to the various speakers and writers who defend the new instrument, and pleads for a new Convention.

Four days later, on December 4th, 1787, he again turns his attention to Mr. Wilson in *Centinel*, No. V, again in the *Gazetteer*.<sup>1</sup> He thinks his speech of the 24th *ultimo* confirmed all he, *Centinel*, had said against government over so vast a territory, and that it should be rejected on a day to be celebrated forever. He reiterates some of his arguments on "consolidation." He dwells on the danger to state's rights, and the powers of Congress.

On December 12, 1787, after three weeks of debate in which Justice Bryan's friends Findlay, Whitehill and Smiley had fought Mr. Wilson, a vote again showed 46 to 23, or 2 to 1 in favor of the new constitution. This brought out another paper, *Centinel* No. VI, also in the *Gazetteer*, which although written on the 22nd, was issued the next day after Christmas. "To The People of Pennsylvania." "Man is the glory, jest, and riddle of the world.—Pope." "Incredible transition! the people who, seven years ago, deemed every earthly good, every other consideration, as worthless, when placed in competition with liberty, that heaven born blessing, that zest of all others;" etc. He says "a golden phantom" is luring them. He says for years past "the harpies of power" have rung the changes on the impotency of Congress until they have given it the scourging power of despotism. He says the discussions now convince all that more limitations and restrictions should be put on this new power, so why the haste? He closes with a quotation from Lord George Digby in Cromwell's time.

The next day he wrote *Centinel* No. VII, which appeared two days later, likewise in the *Gazetteer*. This is a

---

<sup>1</sup> It was written on the 30th of November, 1787.

lamentation also and yet he hopes the conspiracy will be defeated, as the people will provide for a new convention.

Two days later, on the 29th, he wrote another, *Centinel*, No. VIII, appearing in the *Gazetteer* on the next day after New Year's Day. Here he draws a beautiful picture of our land of liberty and the conspirators thinking they had forgotten stamps and tea. They will find differently! He thinks the Carolinas, Virginia, Maryland, New York and New Hampshire may yet save the day. He warns against the monopolizing spirit of the federalist leaders in Pennsylvania and all but mentions Wilson and Morris.

A week later, on January 8, 1788, *Centinel* No. IX appeared, opening with: "You have the peculiar felicity of living under the most perfect system of local government in the world; prize then this invaluable blessing as it deserves." The proof of it is that the ambitious and profligate have tried to destroy it ever since its establishment, but the "well-born" have so far been defeated. "The present conspiracy is a continental exertion of the *well-born* of America to obtain that darling domination, which they have not been able to accomplish in their respective states." He says 6 out of 8 of the late state delegates in the Convention were enemies of the state constitution, and the advocates of the new despotism are the same men. He gives examples of their desperation in various parts of the country and shows great fear of the outcome.

Then it was that Justice Bryan's fellow-jurist of the High Court of Errors and Appeals, Judge Francis Hopkinson, entered the arena under cover of anonymity and began to lampoon the earnest lover of the old Pennsylvania constitution, on the very next day in the *Gazette*. His skit was entitled *The New Roof*. He says skillful architects were called in to repair the roof of a certain mansion and they found a half-dozen defects: general weakness, thirteen rafters not united, rafters warped and not properly joined, wooden pegs (paper money) used instead of nails, the cornice bad, and because the roof was flat it was tramped upon and abused. They decided to make a new one. In a conference "James [Wilson], the architect, who had been



one of the surveyors of the old roof, and had a principal hand in forming the plan of the new one," was there. "Margery the midwife," he says, "who had got a comfortable apartment in the house" [Justice Bryan—using Oswald's old epithet for him] who "had unavoidably acquired an influence in the family," as soon as she heard it, "put on her old red cloak" and went out to get her servants at work against it, choosing William [Findlay], Jack [Smiley] and Robert [Whitehill] to do the objecting; namely, that there was no bill of scantling [rights], no trap door for safety [freedom of the press], that it had battlements [army], the old twelve ornaments [trial by jury], were not retained, the rafters too firmly bound together [invasion of state rights], and finally that it was so self-sufficient it might hang unsupported in the air when the rest of the house had crumbled [consolidation]! "James, the architect," answered these objections, and while he was doing so, a "harmless lunatic" at large was secured by "Margery" and set to making alarms [*Philadelphiaensis* in the *Gazetteer*, a Professor Workman of the University, a teacher from Dublin]. He then gives a caricature of this writer's style: "The new roof! the new roof! Oh! the new roof! shall demagogues, despising every sense of order and decency, frame a new roof? . . . Oh! the days of Nero! Oh, for the *ultima ratio regum*! (He got these three Latin words from Margery). . . . Blow the trumpet; sound an alarm. . . . Do I exaggerate? No, truly. Europe Asia and Africa, deny it if you can. . . . Curse on the villian! . . . Oh! ah! ah! oh!"

Three days after the appearance of this skit, namely, on January 12, 1788, *Centinel*, No. X, appeared, as usual in the *Gazetteer*, showing great encouragement at the awakening of the people, through the freedom of the press. "James [Wilson], the Caledonian, lieutenant-general of the myrmidons of power, under Robert [Morris], the cofferer, who, with his aide-de-camp, Gouvero [Gouverneur Morris], the cunning man, has taken the field in Virginia," has called a conference in alarm, as he saw this uprising. "Such a scene of bustle, lying, and activity, was never exhibited since the

days of Adam," in order to secure dominance by "the well-born few"—"well-born" being captured in great glee from Mr. John Adams' book, where he had used it untactfully.

*Centinel's* quiver was well filled and he was industrious, for four days later, the 16th, he issued *No. XI*, in which he cites Attorney-General Luther Martin of Maryland as proof of his contentions, and pays his respects to the "hobgoblin" which has been brought out by "the deranged brain of *Publius* [*Federalist*], namely, the anarchy which will follow rejection of the new instrument. He says, as Lord Kaimes does, that civil war is preferable to despotism. He points to suppression of newspaper circulation as showing desperation on the other side.

At this Judge Hopkinson, on the 19th of January, 1788, issues a mock intercepted *Centinel* letter to someone in the country. In this he has *Centinel* complain that, while he is issuing letters as fast as he can, the states unanimously or by large majorities are ratifying the new constitution; that Connecticut has just done so by a vote of 127 to 40. So that the opposition had better accept it and join the majority. About the same time Judge Hopkinson issued another skit, purporting to be an account of a meeting of the Wheelbarrow Society in the prison yard, at which *Centinel* was chosen President and Luther Martin, Vice-President, with *Philadelphiaensis* as Secretary.

This was followed, on the 23rd, by *Centinel, No. XII*, in which the word "conspirators" is applied to the Federalist leaders, who are imposing with cunning on "our illustrious chief." He again quotes Luther Martin, and refers to the silencing of the *Pennsylvania Herald*, discontinued on the same day. He praises Mr. Findlay's "powerful arguments" and regrets they had not a wider circulation and refers to the suppression of the short-hand debates of the Ratifying Convention.

A week later, January 30th, *Centinel No. XIII* was issued, in which he says the conspirators have prevented the "arguments of a Findlay, a Whitehill and a Smiley, that bright constellation of patriots" from circulating. He again refers to "Dr. Puff" [Rush], and says "the chief reliance

is on James the Caledonian, who can to appearance destroy all distinction between liberty and despotism, and make the latter pass for the former, who can bewilder truth in all the mazes of sophistry, and render the plainest propositions problematical. He, chameleon-like, can vary his appearance at pleasure, and assume any character for the purpose of deception. In the guise of *Conciliator*, in the *Independent Gazetteer*, he professes great candor and moderation, admits some of the principal objections," etc., and in the figured character of a *Freeman* he combats the minority. Such devotion to despotism makes him most suitable to become Chief Justice of the new government! Here he would be both judge and jury! He thinks organization should be instituted in every county to protect liberty.

Just the day before the sixth state, Massachusetts, ratified, namely, on February 6, 1788, *Centinel* put forth No. XIV. Here he quotes Luther Martin at length as confirmation of his contentions. This is an able paper. He attacks Mr. Wilson, by name, the Post Office, and the suppression of newspapers. His No. XV of February 22, 1788, he shows great hope that the remaining seven states will save the country and he had very fair ground for his hope, since they were so long in deciding. On the 26th, his No. XVI, he again criticises the new constitution and attacks Wilson and Morris, while in his No. XVII on March 24th, he attacks General Mifflin and Robert Morris with such charges that the latter replied on April 8th. In this also he defends Professor Workman from the "*Little Fidler's*" [Hopkinson] attacks. The No. XVIII, on April 8th, is one of his longest and most characteristic papers. There is the charge of scheming and design over the whole land and an analysis of what is being done in the various sections. "Those who favor the system of tyranny," he says, in analyzing the situation in Pennsylvania, "are most numerous in the city of Philadelphia, where perhaps they may be a considerable majority. In the most eastern counties they compose about one-fourth of the people, but in the middle, northern and western counties not above a twentieth part, so that, upon the whole, the friends of the new constitution in this

state are about one-sixth of the people. He holds in contempt the enemies of *Centinel*, and even prophesies honor to the *Centinels* in future and the reverse to the conspirators. He says he has avoided being known, because his personality has nothing to do with the question at issue. This was on April 9, 1788.

Just a week before this, on April 2nd, the *Gazette* published two intercepted letters of Justice Bryan's, written on March 26th, to Mr. John Ralston of Allen Township, Northampton County. No one can read them, after reading *Centinel*, and not feel confident that most of that series were from the same pen. "Last Tuesday," says Justice Bryan, in one of the letters, "the post from New England brought sad tidings for some folks here. The Convention of New Hampshire, it seems, by 70 *against*, and 40 for, have adjourned till 17<sup>th</sup> June. Had the final adjustment of the new system been put, it would have been rejected by a great majority. The friends of it, therefore, to let it fall easily, proposed the adjournment, and the others gave way. This disaster we consider as fatal to the business. So do its advocates here, and they are in the dumps, and some of the members of the General Convention are apologizing for their conduct. Before this news came, the party was up in the skies, as their behavior seemed to express. Yet their success at Boston was so moderated by the propositions for amendment, which, however superficial, broke the facility of the new Constitution. Besides, the president of the Boston Convention, Hancock, has written our Assembly, sending their doings and the amendments, and desiring that this state would adopt similar amendments. On the whole, as New York is not likely to concur; nor Virginia, tho' General W. lives there; nor Rhode Island; and as N. Carolina Convention meets not till 17<sup>th</sup> July, and will be much swayed by Virginia; as Maryland is much divided, if not on the whole against; I have no doubt there will be another Convention. Georgia acceded to it because pressed by an Indian war, and wanted aid immediately.

"Failing," Justice Bryan continues, "the conspirators against equal liberty will have much deceit and wicked con-

duct to answer for. They have seduced the post officers to stop all newspapers from state to state, that contained investigation of their plans, so the dissent of the minority of Pennsylvania did not get to Boston before their convention arose. Every little town furnished a flaming account, like those of Carlisle, Bethlehem, &c., asserting how much the people of their place and neighborhood approved the new plan. These were circulated and reprinted from Georgia to New Hampshire, with parade. This deceived the people into a notion that there was a general approbation. In Virginia, at this moment, from the suppression of intelligence and by false letters, it is generally supposed the opposition in Pennsylvania had vanished; and at Boston, the news of the disturbances at Carlisle, reaching Boston before the Convention there arose, the whole was confidently denied. As the Convention of Massachusetts was finishing, a vessel is made to arrive at port 15 miles off, with account that N. Carolina had adopted, tho' that Convention sits not before July. Again, as the Convention of New Hampshire was near finishing, this falsehood is newly published at Newport in Rhode Island, and another vessel pretended, to secure another adoption! These are but a specimen of those arts and inventions. But a lying tongue is but for a moment. The people everywhere will see and feel their frauds. Yet these are generally the doings of the first men in many of the States. I say nothing of the fraud of calling conventions hastily in all the New England States, save Rhode Island, which has called none, in New Jersey, in Pennsylvania, Delaware. In the Southern States (all except Georgia) the calls of conventions have been deliberate and distant; so in New York. I am glad of the prospect we have, because it will prevent the danger of confusion and bloodshed. For if more states had been nominally led into the plan, while the body of the people in many of them were still averse, civil war must have ensued, as the conspirators would have endeavored to set their scheme in motion, without funds to support the necessary standing army. This danger now seems to be over, for which we ought to be thankful.

“In Cumberland county,” he continues, “all are against it, except a small group in Carlisle, and a few, very few, scattered in the country. This group, in October, wrote and censured their county representatives for attempting the breaking up of the late General Assembly, to prevent the calling of the people of any county east of Bedford to elect Convention in nine or ten days; with other matters favoring the new plan. These were paraded in the Carlisle *Gazette* as the sense of the people, and by the party published here and elsewhere. The county resented it, and warned these men not to repeat the artifice. Yet on the 25<sup>th</sup> December the same people attempted to rejoice on occasion of the adoption by the Convention of Pennsylvania. They were hindered; some blows ensued. Next day the same men, armed, made another essay; they were overpowered, and the effigies of two leading members [Wilson and McKean] of the Convention were burned in contempt. Upon this, a letter with many affidavits was dispatched to Mr. [Chief Justice] McKean, pressing his warrants for 20 persons, charged with riots; among others Justice Jordan. The business being irksome, Mr. McKean, alleging it was indelicate for him to act when he was ill-used, persuaded Mr. Atlee, and laborred me, to send up our warrant. I represented the danger of risquing insult to our precept, advising delay, and the rather, as no hasty steps had been taken to bring the city rioters to justice. Mr. A[tle]e and Mr. Rush sent up their warrants. It lay some time in Carlisle, unexecuted, to bring the accused to submit and ask pardon. Nothing being done, however, in this way, about the 26<sup>th</sup> of February the sheriff was set to work. Eight or nine refusing to give bail, they were imprisoned. By the last accounts from Harrisburgh, large numbers were assembled, from York and Dauphin, as well as Cumberland, to set the prisoners at large. This gives much uneasiness to the conspirators here. Even the Chief Justice, ’tis said, had before the news came consented to drop the prosecution, as the members of Council feared the event. But he wrote Mr. Atlee too late, if he has written. We hope no farther mischief will ensue, tho’

the conspirators in Carlisle told Mr. McKean in their letter, they feared that their dwellings would be pulled down. Here, in October, we were forced to hold our tongues, lest well dressed ruffians should fall upon us. At this day, the case is otherwise. Yet many are still silent, lest, the new plan being adopted, they might hereafter be ruined for opposing. Since it was commonly safe from immediate attack, some of us have been open and avowed, and risked all the malice of these men. The common people are latterly too much of our opinion to hurt us. Indeed, none but *gentlemen mobs* have been active in Philadelphia.

"In Montgomery" [County], he proceeds, "the consent of the county is against the plan, the friends of it are silent; [in] Berks very few who favor it; the same in Dauphin. In the town of Lancaster there is a party, but few elsewhere in the county. In York, the opposers are very numerous. In Franklin they are the great body of the people. In Bedford and in the overhill counties very few are for it. Of Northumberland I can say little. Our friends in Bucks and Chester [counties] are much increased. The Quakers are changed generally. The solid Quakers here greatly dislike it; but they do not intermeddle. Their young people favor it, and in this city, Baltimore, New York, Boston &c. there is a majority for it; most so in Boston. Shays insurrection has been made a great engine of terror to dispose people of that country to receive chains, if the western counties can be kept down. Shays and his adherents were roused to what they did by excessive taxes; perhaps contrived to dispose the New England States to receive the new system, to which they would otherwise be averse.

"Since writing the foregoing," the letter proceeds, "we have accounts from Carlisle, that about 1000 armed men appeared there, and demanding of the sheriff to open the prison, set at liberty the persons charged as rioters, and burned the commitment. The inhabitants of the town, in the meanwhile, kept close within their houses, and the armed men soon went away without doing anything further. . . . The peculiar reason why the party for the new

constitution is large here, is the supreme influence of the Bank, the weight of Mr. Morris, etc."<sup>1</sup>

This was in April, 1788. Let us stop for a moment to see how Justice Bryan, in the midst of this contest, could quietly talk with his colleague. Justice Atlee, when he chose, and never a word about it: "Having a little business at Lebanon respecting the University," he writes him on May 14th, in this city, "I propose to take that place in [on] my way. This will not so well admit of meeting you at Middletown on the Swatara, as you hinted. I hope to obtain the favor of the company of Mr. Rittenhouse, the Treasurer, who goes up to Chambersburgh to bring certain lands, which were mortgaged in the Loan Office of 1773, to sale. This will, should I be favored with his company, oblige me to accommodate to his wishes, which will be to take the journey easy. I expect to leave home the 22<sup>nd</sup> at farthest.

"We have no very material news here," he continues. "The accounts of prosperity in England are very striking. The national funds, scarcely six millions in 1776, have been improved to nearly 18. Meanwhile interest of money is very low. Ireland, too, shares in the advantage. A bounty on wheat brought by land to the capital has excited such an agricultural spirit, that she is no longer obliged to import bread-corn; but actually supplies herself, and has to spare for exportation. Hence the legal rate of interest is on the point of being reduced from six to five per centum. In both countries ready money abounds.

"The war in the eastern parts of Europe draws away the wheat of Poland, and the Southern nations, deprived of this granary, apply to us for wheat. Something considerable is doing in the shipping of wheat; more would be if ships were most plentiful. This last circumstance keeps the price from rising, as other it might. If business like this had

---

<sup>1</sup> It will be remembered that Patrick Henry said: "I look at that paper [the new national constitution] as the most fatal plan that could possibly be conceived to enslave a free people;" that James Monroe attacked it "as a dangerous government;" that Thomas Jefferson opposed it until it was amended; and that Edmund Randolph would not sign it at all. For more elaborate treatment of this and other features of the constitutional contest, see *The Life and Writings of James Wilson*, by Burton Alva Konkle, Vol. I.



not made some stir, we should be very dead here. The merchants and traders are now doing penance for the extravagant transactions since the peace, by which they have beggared themselves and stripped the country of its specie. But this visitation of the afflictive kind will gradually restore us to better circumstances. Nothing else could. Economy and industry will be forced upon us. I am told that executions, in this part, for land begins to lessen.

“A dreadful occurrence at New Orleans proves advantageous to us. That wooden town has been almost consumed by fire. The Governor has opened the port to strangers in order to procure relief. I am told that our vessel from thence has lodged 30 thousand dollars in the bank. There are also others for necessities. It is thought that houses ready framed will answer as merchandise.

“The unfortunate paper money of 1785 is sold at 33 $\frac{1}{3}$  discount; and I see no chance of relief for awhile. If it should grow worse we might hope for an interposition. But I apprehend it will rather improve a little, as all will now seek it to pay their taxes at the advantage of lessened value. For this purpose the brokers have agents in every part to dispense out these bills of credit to the people. The city taxes and those of the county of Philadelphia are payable in it. Besides the quantity, already reduced to about £106,000, will be further reduced by cancelling £25,000 in course of this year, as provided by the funding act; and the fees of the Land Office, during the year, may sink £7000. The last emitted paper of N. York is but 7 per cent discount for specie yet larger in value and has smaller taxes to operate on. Here the underworkings of the Bank, jealous of interference with her paper, has been a fatal stab; and the illegal draughts of Council on the Treasury for £128,000 in favor of Congress, beyond the sums provided by the Legislature, has given occasion to so much exchanging of these bills for specie, in order to carry off the value, that the mischief has been highly increased. This, too, has injured the public creditors doubly, who have not all yet had the interest due in October last. Dollars grow so scarce latterly—and they are preferable money to export—that the brokers

have formed a rate of exchange between them and other specie."<sup>1</sup>

This was in May, 1788, and at that time Justice Bryan seemed justified in his diagnosis of the situation given in his April letter; but in May, the 23rd, South Carolina came in about 2 to 1 for it, and about a month later, June 21st, New Hampshire adopted it by a much smaller margin, of about 5 to 4, which, being the ninth state to come in, established the new instrument. The announcement was made in Congress at New York on the 25th. The following day Virginia came in, at about 8 to 7, making the "tenth pillar" for "the new roof." After the news of South Carolina came, the Federalists of Philadelphia began preparations for probably the most remarkable Fourth of July celebration the city has ever witnessed, even to this day, and its symbolical artistry was due chiefly to Judge Francis Hopkinson. As an illustration of notable features of the great symbolical procession, the *Constitution* was represented by a car in the form of an eagle, resting on a base marked *The People*—a car twenty feet long with wheels eight feet high! In this sat the red-robed members of the bench of the Supreme Court of Pennsylvania, Chief Justice McKean, Justice Atlee, Justice Rush—all, indeed, but Justice George Bryan, who could not bring himself to celebrate the sure sign of the fall of his beloved old state constitution, for which he had fought for over a quarter of a century. By a curious irony, immediately behind this car was a double file line of ten men on foot representing the "ten pillars," or states, which had adopted the new Constitution, headed by James Wilson, for Pennsylvania, and Col. Thomas Robinson, for Delaware, the first two states to ratify! How could Justice Bryan sit in such public state, in such a place, after all he had fought and feared! Celebrate the fall of his deepest concern for over a quarter of a century! For he well knew this was merely a preface to the chapters, yet to come, that would picture the destruction of his beloved state constitution and the laws he had built upon it; and also the democratic system of government in which he believed. And one does

---

<sup>1</sup> Atlee MSS., at the Library of Congress.

not have to go far for present day illustration of Justice Bryan's unique position: to this lover of state pre-eminence and direct popular control, the closely articulated scheme of checks and balances, created by the new constitution of the United States, was very similar to the League of Nations in the eyes of Senators Lodge, Knox and others of to-day, who see in it a tyranny over nations and a danger to national liberty and the constitution of the nation, just as Justice Bryan saw a threat against the constitution and liberties of Pennsylvania. And, as shall appear, he was also like them, in insisting that, if the new instrument is bound to be accepted, then there shall be several amendments; not, as the distinguished Senators have desired, amendments of emasculation, but merely amendments of safety.

Justice Bryan and his party were very moderate compared with Virginia and New York, who, while accepting, made most extravagant demands, such as recommending a bill of rights of twenty items and the same number of amendments, and even—as in the case of the former—practically avowing the right of secession! Justice Bryan's followers over the western part of Pennsylvania took courage during the summer and did just what James Wilson's disciples had done in 1776 and 1783, in the matter of a state constitution, namely, called for a conference to demand a new convention. The Conference was called for September 3, 1788, and at Harrisburg, Robert Whitehill of Cumberland county being the lieutenant most active in arranging for it. They sent out letters as early as July 3rd in agitation for it, and deputies to it were elected over the state all during July and August; and on that day thirty-three members answered roll-call, and they represented every county in the state except Montgomery and York. They chose Blair McClenachan of Philadelphia, chairman, and John A. Hannah of Harrisburg, secretary, with Justice Bryan the most distinguished of them and their real leader. A western man, later to become famous, 'Albert Gallatin, submitted resolutions, looking to a revising convention, "to prevent a dissolution of the union, and to secure our liberties and those of our posterity." They wanted the Assembly

to ask Congress to call it, as New York had requested, and urged all friends of the movement to form committees of correspondence, just as they did in 1774 and '5. They also called for an inter-state conference like the present inter-county one. The conference did not adopt the elaborate resolution, but issued an account of the meeting, the names headed by Justice Bryan; and as he did most of the work in assembly in association with many of these men, it is natural to infer that he did so in this case.

The results were admirable, and showed how thoroughly Justice Bryan could accept defeat, once it was decided. "The ratification of the federal constitution having formed a new era in the American world, highly interesting to all the citizens of the United States," reads the resolutions adopted and carrying that fine poise that was so striking a characteristic of Justice Bryan when he chose, "it is not less the duty than the privilege of every citizen, to examine with attention the principles and probable effects of a system on which the happiness or misery of the present, as well as future generations so much depends. In the course of such examination, many of the good citizens of the state of Pennsylvania have found their apprehensions excited that the constitution in its present form contains in it some principles which may be perverted to purposes injurious to the rights of free citizens, and some ambiguities which may probably lead to contentions incompatible with order and good government. In order to remedy these inconveniences, and to avert the apprehended dangers, it has been thought expedient that delegates, chosen by those who wish for early amendments in the said constitution, should meet together for the purpose of deliberating on the subject, and uniting in some constitutional plan for obtaining the amendments which they deem necessary.

"We the conferees assembled, for the purpose aforesaid, agree in opinion:

"That a federal government only can preserve the liberties and secure the happiness of the inhabitants of a country so extensive as these United States; and experience having taught us that the ties of our union, under the articles of

confederation, were so weak as to deprive us of some of the greatest advantages we had a right to expect from it, we are fully convinced that a more efficient government is indispensably necessary; but although the constitution, proposed for the United States, is likely to obviate most of the inconveniences we labored under, yet several parts of it appear so exceptionable to us, that we are clearly of opinion considerable amendments are essentially necessary. In full confidence, however, of obtaining a revision of such exceptionable parts by a general convention, and from a desire to harmonize with our fellow citizens, we are induced to acquiesce in the organization of the said constitution.

"We are sensible that a large number of the citizens of this and the other states, who gave their assent to its being carried into execution, previous to any amendments, were actuated more by the fear of the dangers that might arise from delays, than by a conviction of its being perfect; we therefore hope they will concur with us in pursuing every peaceable method of obtaining a speedy revision of the constitution in the mode therein provided; and when we reflect on the present circumstances of the union, we can entertain no doubt that motives of conciliation, and the dictates of policy and prudence, will conspire to induce every man of true federal principles to give his support to a measure, which is not only calculated to recommend the new constitution to the approbation and support of every class of citizens, but even necessary to prevent the total defection of some members of the union.

"Strongly impressed with these sentiments, we have agreed to the following resolutions:

"1. *Resolved*, That it be recommended to the people of this state to acquiesce in the organization of the said government; but although we thus accord in its organization, we by no means lose sight of the grand object of obtaining very considerable amendments and alterations, which we consider essential to preserve the peace and harmony of the union, and those invaluable privileges for which so much blood and treasure have been recently expended.

"2. *Resolved*, That it is necessary to obtain a speedy revision of said constitution by a general convention.

"3. *Resolved*, That, in order to effect this desirable end, a petition be presented to the legislature of this state, requesting that honorable body to take the earliest opportunity to make application for that purpose to the new Congress.

"The petition proposed is as follows:

"To the Honorable Representatives of the Freemen of the Commonwealth of Pennsylvania, in General Assembly met, this Petition and Representation of the subscribers humbly show.

"That your petitioners possess sentiments completely federal; being convinced that a confederacy of republican states, and no other, can secure political liberty, happiness, and safety through-out a territory so extended as the United States of America. They are well apprised of the necessity of devolving extensive powers to Congress, and of vesting the supreme legislature with every power and resource of a general nature; and consequently they acquiesce in the general system of government framed by the late federal convention; in full confidence, however, that the same will be revised without delay: for, however worthy of approbation the general principles and outlines of the said system may be, your petitioners conceive that amendment in some parts of the plan are essential, not only to the preservation of such rights and privileges as ought to be reserved in the respective states, and in the citizens thereof, but to the fair and unembarrassed operation of the government in its various departments. And as provision is made in the constitution itself for the making of such amendments as may be deemed necessary, and your petitioners are desirous of obtaining the amendments which occur to them as more immediately desirable and necessary, in the mode admitted by such provision, they pray that your honorable House, as the Representatives of the people of this Commonwealth, will, in the course of your present session, take such measures as you in your wisdom shall deem most effectual and proper, to obtain a revision and amendment of the Constitution of the United States, in such parts and in such manner as have been

or shall be pointed out by the conventions or assemblies of the respective States; and that such revision be by a general convention of representatives from the several states in the union.

"Your petitioners consider the amendments pointed out in the propositions hereto subjoined as essentially necessary, and, as such, they suggest them to your notice, submitting to your wisdom the order in which they shall be presented to the consideration of the United States.

"The amendments proposed are as follows, viz :

"I. That Congress shall not exercise any powers whatsoever, but such as are expressly given to that body by the constitution of the United States; nor shall any authority, power or jurisdiction, be assumed or exercised by the executive or judiciary departments of the union under color or pretense of construction or fiction. But all the rights of sovereignty, which are not by the said constitution expressly and plainly vested in the Congress, shall be deemed to remain with, and shall be exercised, by the several states in the union according to their respective constitutions. And that every reserve of the rights of individuals, made by the several constitutions of the states in union to the citizens and inhabitants of each State respectively, shall remain inviolate, except so far as they are expressly and manifestly yielded or narrowed by the national constitution.

#### "ARTICLE I, SECTION 2, PARAGRAPH 3

"II. That the number of representatives be for the present one for every twenty thousand inhabitants, according to the present estimated number in the several states, and continue in that proportion till the whole number of representatives shall amount to two hundred; and then be so proportioned and modified as not to exceed that number till the proportion of one representative for every thirty thousand inhabitants shall amount to the said number of two hundred.

#### "SECTION 3

"III. That Senators, though chosen for six years, shall be liable to be recalled or superseded by other appointments, by the respective legislatures of the States at any time.

## "SECTION 4

"IV. That Congress shall not have power to make or alter regulations concerning the time, place and manner of electing Senators and Representatives, except in case of neglect or refusal by the State to make regulations for the purpose, and then only for such time as such neglect or refusal shall continue.

## "SECTION 8

"V. That when Congress shall require supplies, which are to be raised by direct taxes, they shall demand from the several States their respective quotas thereof, giving a reasonable time to each State to procure and pay the same; and if any state shall refuse, neglect, or omit to raise and pay the same within such limited time, then Congress shall have power to assess, levy, and collect the quota of such State, together with interest for the same from the time of such delinquency, upon the inhabitants and estates therein, in such manner as they shall by law direct, provided that no poll-tax be imposed.

## "SECTION 8

"VI. That no standing army of regular troops shall be raised or kept up in time of peace, without the consent of two-thirds of both Houses in Congress.

## "SECTION 8

"VII. That the clause respecting the exclusive legislation over a district not exceeding ten miles square, be qualified by a proviso that such right of legislation extend only to such regulations as respect the police and good order thereof.

## "ARTICLE I, SECTION 8

"VIII. That each State respectively shall have power to provide for organizing, arming, and disciplining the militia thereof, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, but when in actual service in times of war, invasion or rebellion; and when not in the actual service of the United States, shall be subject to such fines, penalties, and punishments only, as shall be directed or inflicted by the



laws of its own state: nor shall the militia of any State be continued in actual service longer than two months under any call of Congress, without the consent of the legislature of such State, or, in their recess, the executive authority thereof.

“SECTION 9

“IX. That the clause, respecting vessels bound to or from any one of the States, be explained.

“ARTICLE 3, SECTION I

“X. That Congress establish no court other than the Supreme Court, except such as shall be necessary for determining causes of admiralty jurisdiction.

“SECTION 2, PARAGRAPH 2

“XI. That a proviso be added at the end of the second clause of the second section of the third article, to the following effect, viz.: Provided, that such appellate jurisdiction, in all cases of common law cognizance, be by writ of error, and confined to matters of law only; and that no such writ of error shall be admitted except in revenue cases, unless the matter in controversy exceed the value of three thousand dollars.

“ARTICLE 6, PARAGRAPH 2

“XII. That to article six, clause two, be added the following proviso, viz.: Provided always, that no treaty which shall hereafter be made, shall be deemed or construed to alter or affect any law of the United States, or of any particular State, until such treaty shall have been laid before and assented to by the House of Representatives in Congress.

“*Resolved*, That the foregoing proceedings be committed to the chairman for publication.” — and it appeared in the *Independent Gazetteer* on September 15, 1788.

Eight of the thirty-three who put forth the plea for revision were of the minority in the Ratifying Convention who had issued reasons for their dissent on the previous December 12, '87. It will be illuminating to compare the latter

with those of the Conference at Harrisburg. Briefly, the dissentients of December avowed that the Wilson amendment of 1783 was the beginning of complaint of lack of Congressional powers, but people only expected mere revision of the Articles, not their destruction. Secrecy was objected to; haste in ratifying also; methods of the federalists objected to; they wanted: religious liberty protected; trial by jury in federal courts; and especially in capital cases; excessive bail be forbidden; serving of unsupported warrants forbidden; freedom of speech and press protected; state militia and right to bear arms protected; freedom to hunt; limit Congress' taxing power to imports and duties; Congress shall not interfere with state elections and Representatives shall be chosen annually; the State shall control the militia; federal government shall be forbidden to go beyond the limits of its powers; judges shall be independent and the executive shall have an advisory council and the three powers shall be kept separate; treaties shall not interfere with constitution or laws; judiciary powers must be confined to purely national objects. They agreed to the constitution only on condition that these amendments be made. It will thus be seen, that while a great many of their fears had been removed, the Conference's twelve proposals were, at bottom, somewhat of the same general tenor of apprehension, as those of the dissentients of the Ratifying Convention, but not with the same emphasis. It will be well to keep these in mind for comparison with the amendments finally to be adopted.

Justice Bryan and his friends pushed their agitation harder than ever, if possible, now, with a view to capturing the Congressional election to insure measures for amendments to the constitution, either by convention or Congressional submission. *Centinel* resumed his papers, and, as they proceed, one cannot but feel that both father and son were responsible for them. *No. XIX* appeared just a month after the Harrisburg Conference, on October 7, 1788, as usual, in the *Gazetteer*: He says that when he wrote his last in April, he had no doubt that the new constitution would be rejected. Amendments were implied in the man-

ner of the adoption in most cases, however. He doubts the "well-born" conspirators' sincerity and he warns "ye patriots of America" to take possession of the First Congress; urges them to support the new government in order to get the amendments. In November, 1788, *Centinel No. XX* appeared in the *Freeman's Journal*, in which he warned again against the "well born junto," "who ten years ago could not muster more than eighty-two devoted adherents in the state of Pennsylvania."<sup>1</sup> He describes how they came to their present power: "The first consideration that this review presents is the policy by which the *junto* have attached to their party the weighty interest of the Quakers and Tories. In the late arduous contest with Great Britain, wherein the lives and fortunes of the Whigs were dependent upon the uncertain issues of the war, and in the course of which so much barbarity and devastation were committed by the British; it is not to be wondered at that those persons who were disaffected to the common cause, who refused to share the dangers or contribute to the expenses of the war, and on the contrary were justly suspected to be aiding and assisting a cruel and vindictive foe, should, in consequence thereof, incur the resentment of the Whigs and be treated rather as enemies to their country than as fellow citizens. Hence the *test-law*, which was made to draw the line of discrimination, and to exclude from our councils those who were inimical to our cause: hence too the violence and severity with which the disaffected were treated; which has laid the foundation of the most implacable resentments and lasting prejudices.

"The *junto*, considering that persons so situated and under the influence of such feelings, would make zealous adherents if they would be flattered with hopes of protection from what they deemed oppression and persecution, and still more so if they could be flattered with the pleasing prospect of a repeal of the *test-law*, and thereby having it in their power to assert their rights and vindicate

---

<sup>1</sup> This first appeared in the *Freeman's Journal*, where *Centinel* got a name wrong, so he reprints it correctly, later than *No. XXI*, in the *Gazetteer* of November 13, 1788.

their sufferings; the *junto* accordingly made the most liberal offers of their services to the disaffected, and as their dislike and dread of the Whigs was the cement of union, the basis upon which the *well-born* [still reminding Mr. Adams of his unfortunate slip!] meant to build their meditated schemes of profit and aggrandisement, *Galen* [Dr. Rush], and such minions were employed to aggravate the feelings and confirm the resentments of the disaffected by such misrepresentations of the principles and designs of the Whigs as to keep the former under continual apprehension of violence and rapine; . . ." This led the liberal Whigs to vote to repeal the test laws, and the "junto" opposed it, thus losing that element in their constituency, who all voted for Justice Bryan for Censor to succeed Col. Miles. This led the "junto" to afterward repeal the test laws themselves. *Centinel* says: "I was always against the policy of continuing the test-law one hour longer than was absolutely necessary. . . ." He cites the Irish treatment, as a warning that he appreciated. He says "another great engine" has been the Bank, which he says was subservient to the "well-born" junto. He says destruction of every patriot was their plan, and *Galen* was the most malignant, boasting that he destroyed the "patriotic Reed." Those are the men who have made the new constitution, and are now on the way to get hold of the "purse-strings" of the nation. He warns against the Lancaster conference to nominate candidates. He says: "the man who confessedly has had the principal share in the framing of a constitution" which needs great amendments; the man who in every stage of its adoption has been its greatest advocate" [James Wilson]—this man is the chief deputy of Philadelphia to Lancaster!

*Centinel*, on November 8th, 1788, issues *No. XXI* in the *Gazetteer* giving an interesting account of that movement in France by which Montesquieu's writings had revived the local parliaments to resist despotism, causing the despots to create a single general parliament, or *Court pleuiere*, remote from the people. He thinks the junto despots are wonderfully familiar with the French methods

of despotism—a national legislature and national courts to swallow up state legislature and judiciary. He again speaks of *Galen* and also of “James the Caledonian, the principal framer and advocate of the new constitution.”

On November 14, 1788, *No. XXII*, he issues a defense against attacks by certain writers, notably *Lucullus*, in the *Gazette*, and attributes it to Dr. Rush. In this he defends the *test-law*, and the *legal tender law* of the early days of the war as necessary war measures; besides they were made on Congressional recommendation, every state government followed it, and the junto party re-enacted some of them. He also defends the militia law—this being one of his most able papers, especially as a rebuttal one. He wins his case.

He gives attention to Robert Morris and the Congressional investigation in his *No. XXIII* of November 20, 1788, and he made it so powerful that it drew a reply from the one-time Financier-General, which was an unusual breaking of his rules. His *No. XXIV*, on the 24th, dealt with Mr. Morris' reply; and with this, his very able and well-written papers close for a time, since the Congressional election, which they were designed to influence, occurred two days later.<sup>1</sup>

In order to follow the influence of the Harrisburg Conference which voiced the general apprehension of the dissentients of the Ratifying Convention, and the papers of *Centinel*, one must anticipate events somewhat, at this point. The new national government at New York was getting in working order during the summer season of 1789, but the persistence of North Carolina and Rhode Island, in staying out of the union, and the equal persistence in all, who, like the Harrisburg Conference, sought amendments, caused Congress, on September 25, 1789, to submit ten amendments to the new constitution; and it will be well to note how nearly like those of the Harrisburg Conference and the dissentients of the Ratifying Convention they were:

---

<sup>1</sup> McMaster and Stone, in their *Pennsylvania and The Federal Constitution*, evidently thought the *Centinel* papers closed with this one, which, however, is not the case, as will appear in the succeeding chapter.

Of those amendments, Article I concerns freedom of religion, speech, press and petition; Article II, right of people to bear arms not to be infringed; III, on quartering of troops in a house; IV, security from unreasonable search and seizure; V, protection in criminal trials and compensation for property; VI, civil rights protected in criminal trials; VII, civil rights in civil suits; VIII, excessive bail and punishments prohibited; IX, provision for reserved rights; and, finally, judicial power not to extend to suits against a state. It will be observed that these are largely of the nature of a bill of rights, or limiting to executive, legislative and judicial powers. It will also be observed that they do not include the Harrisburg Conference's recommendations: (I) interpreting the line between State and national jurisdiction; or (II) proportional representation; or (III) Senatorial recall; or (IV) interpreting of national power over election; or (V) interpretation of national taxing power; or (VI) interpretation concerning a standing army; or (VII) control of a District of Columbia; or (IX) that about vessels; or (X) that limiting power to create courts; or (XI) their qualifications; or (XII) interpreting the relation of treaties to constitution and laws. So that the dissentients' bill of rights fears were cared for more than the interpretative fears of the Harrisburg Conference. This is significant of Judge Bryan's apparently more accurate understanding of the nature of the constitution, consequently reduced fears as to the reserved rights, and anticipation of constitutional interpretation and constitutional law, as became a jurist. It also illustrates how much more widely the reserved rights features, or reserved limitations of the three great powers of government, were emphasized in the other states; and how much more closely Congress followed the dissentients' fears, as expressed at the Ratifying Convention, than the non-official expressions such as those of the Harrisburg Conference.

As a most interesting judicial experience of Judge Bryan's occurred in this year, 1788, and especially as it affords an opinion of his, the only one known to us among all he delivered from the bench, the constitutional story may

be interrupted for a moment. That stormy petrel of the Philadelphia press, Eleazar Oswald, in a controversy with one, Andrew Brown, was cited to appear before the Chief and other Justices in contempt of court proceedings because of what he had published in a certain case and appeared on Monday, the 14th of July, 1788. On the following day Chief Justice McKean ordered his imprisonment for a month and a small fine. Oswald, of course, became exceedingly bitter toward Chief Justice McKean and during the October election excitement, made, one day while under the convivial effects of some of his London Coffee House beverages, threats of bodily injury against him. He was arrested on October 6th, at the instance of the head of the Supreme Court and appeared before Justices Atlee, Bryan and Rush. The case was tried on the 9th before Justice Bryan, who, on the 11th, gave his decision:

“The matter depending before me is a charge against Colonel Eleazer Oswald, of threatening to beat or kill the Honorable, the Chief Justice, because he had in his official capacity adjudged the said Eleazer to fine and imprisonment, for contempt. It is the Chief Justice who makes this complaint, and thereupon calls for surety of the good behavior to be demanded of Colonel Oswald. For this purpose a warrant has been issued by the three Assistant Justices of the Supreme Court to the Sheriff of the county of Philadelphia, his deputy and deputies, directed, for the bringing before the same assistant Justices, or one of them, the said Colonel Oswald, to show cause, why he, the said Eleazer Oswald, should not find surety accordingly to the Commonwealth, towards all the liege people thereof, and especially towards the Honorable Thomas McKean, Esquire, LL. D. Chief Justice of this Commonwealth.

“As to the law on this subject, it appears by the train of authorities and decisions upon, and since the English statute of the 34<sup>th</sup> of Edward, the first, Cap. 1<sup>st</sup>, that the charge against Colonel Oswald falls within the jurisdiction of a Judge of the Supreme Court, as to binding him to the good behavior. Before this statute this preventive mode of justice was confined to Judges sitting in court, and was

exercised after conviction of an offender by his peers, as part of the sentence passed on him. And although Dr. Burn (see his excellent book, entitled *The Justice of the Peace and Parish Officer*, under the proper head) has shown by great strength of argument, that single Justices of the Peace have, by a most liberal and undue construction of this criminal law, gradually obtained large jurisdiction concerning *the good behavior*, and much discretionary authority therein, which did not belong to any Keeper of the Peace at common law, nor which was intended to be devolved to the Justices of the Peace by the makers of that statute (see Barlow, page 524), yet they have obtained it, and they have exercised it for some centuries past; and however proper and useful Dr. Burn's cautions on this head may be to gentlemen, who act as Justices of the Peace, yet it appears to me that nothing less than a legislative declaration can now divest these magistrates of the authority. It was said, that the act of the General Assembly, of the late province, passed in 1705, concerning binding to the peace, and the good behavior, has supplied and superceded the statute, and limited the jurisdiction to the case therein mentioned; but the constant course in Pennsylvania, since that period, has been to follow the English precedents and practice under the statute above mentioned. Besides, the modern commission of the peace in England, first drawn in the year 1590, expressly supposes and assigns this power to the Justices of the Peace, and each of them severally.

"It must be granted, that the binding to the good behavior upon this statute (which seems to have been made to suppress riots and disorders of disbanded soldiers) of persons accused and greatly defamed for frequenting bawdy houses; for being the supposed father of bastard children; for habitual drunkenness; idle vagabonds and the like, without the verdict of a jury, and at the discretion of a Justice of the Peace, although held out by writers on law of great character, should dispose the Justices to caution, to which indeed the measured words of Judge Blackstone, on this subject, tends, who introduces what he says thereon, *it is holden*, that surety of the good behavior may be required



of such persons. To show how authority is extended by practice, the modern usage of issuing warrants to apprehend felons before they are indicted, contrary to the ancient common law, may be instanced. Lord Coke, in his fourth institute, page 177, revolts against the innovation; but Lord Hale, who wrote in the reign of Charles the second, indicates this assumed authority of the Justices, as well established by long practice, and as essential to justice, so that it ought to be supported. Hence, probably, it is from ancient usage, that grand jurors are still sworn to keep secret the charges brought before them, lest the accused, who in former times were not yet arrested, should get notice of the prosecution and flee from justice. 1<sup>st</sup> Hale's History 579; 2<sup>nd</sup> of same, 80, 107 and 110; 2<sup>nd</sup> Hawkins 85.

"It is remarkable that after Dr. Burn has so ably investigated this act of Parliament, and the judicial expositions of it, and has shown the extraordinary extent given in practice to the statute, he should subjoin, as he does, forms and precedents conformably to the modern usage under it.

"In the case of Colonel Oswald, threats of the most extravagant and dangerous nature, touching the Chief Justice and other persons, have been proved, and these threats have been uttered with great vehemence. One witness says that Colonel Oswald, in his passion, went so far as to declare that if he did not get satisfaction in a legal way for his supposed wrongs, he would raise an insurrection in the state, or to that effect. Such an outrage is of the worst example, and calls for animadversion and restraint: It is true that these threats have been denounced in the hour of intoxication and frantic passion, and that they were not believed, by those who heard them, to be the effect of premeditation; nor to be such as would be executed. But it is observed, on the other hand, that in the less guarded hours of inebriety, and passion, the designs of violent tempers are disclosed.

"However, as the facts proved against Colonel Oswald, though early known, were not actually complained of until the sixth instant; as no new threats, nor any tendency to the violence, already threatened, have been shown; nor even

charged; as the complainant doth not manifest any apprehension of danger from Colonel Oswald, but the contrary; as security for the good behavior includes security for the peace and more, and is in its nature more easily forfeited; and, moreover, as Colonel Oswald's means are known to be small, and the circumstances of the accused, in cases like this, are very important, I call upon him to become bound, himself, in £300 lawful money of Pennsylvania, and that he find sufficient surety bounds for him in £300, of like money, for his good behavior towards the Commonwealth and every citizen thereof, especially towards the Honorable Thomas McKean, Esquire, Doctor of Laws, Chief Justice of this state, from this time until the 15<sup>th</sup> day of August next. — 11 October, 1788.”<sup>1</sup>

As this is the only full opinion and decision of Justice Bryan's, delivered from the bench, that has been preserved, it fortunately shows an excellent example of his learning, his spirit and his courage. Even Colonel Oswald, while he objected to those “constructive contempts,” as he called them, treated Justice Bryan's decision with eminent respect, which was quite unusual with him; but, attention may now be turned to other events.

The new national constitution was now a fact. The election of national representatives had occurred in Pennsylvania on November 26, 1788, two days after the last of the *Centinel* papers had appeared. The Presidential electors were chosen something over a month later, on January 7, 1789, and about three months later, on March 3rd, the Pennsylvania Assembly refused to concur in the proposal of that of Virginia for a new amending convention; and, of course, the Harrisburg Conference appeal was no more successful in that body. The new national government went into effect the next day, March 4th, at New York; and on the same day the Assembly at the Philadelphia State House compelled the University of Pennsylvania to restore, so far as it could, the College of Philadelphia—an other blow to the régime of Justice Bryan, although, essentially, as will presently appear, it affected the University but

---

<sup>1</sup> *Independent Gazetteer*, November 3, 1788.

little. The new Court House just built on the northwest corner of State House Square was, on the same day also, offered to the new national government as a capitol. Finally on the 24th of the same month—only three weeks later—came the final blow to the Bryan structure, built up in Pennsylvania in the last more than a dozen years, namely, the call of the Assembly for a new state constitutional convention in a vote of 41 to 16, that knelled the downfall of his beloved constitution, which, in its old and its modified forms, had existed for eighty-eight years, and, as men of all parties testified, had enabled Pennsylvania to become one of the first three states in the union. The downfall had not yet occurred, however, and Justice Bryan and his friends did not propose to let it occur without fighting it, inch by inch. The new political science of individual sovereignty, which leased a revocable, limited sovereignty to both state and nation, and reserved the residue to itself, in a balanced, self-restrained government of checks and balances, might be enthroned in the national government; but the old colonial mode of direct action, by a single-chambered legislature, should still stand in Pennsylvania, if he had the power to keep it.

## CHAPTER XX

### THE FALL OF THE OLD CONSTITUTION OF PENNSYLVANIA OF 1701-1776, AND HIS DEATH, 1789

When, on the same day, the new national government began in New York, March 4, 1789, the University of Pennsylvania was compelled by the State Assembly to restore what had been taken from the College of Philadelphia, Justice Bryan was still a member, *ex officio*, of the board of trustees of the University, though he was no longer Treasurer, as he had been for so many years. Almost a year before, namely, on March 25, 1788, at the instance of ex-Provost Smith, the charter and minutes of the old college had been ordered into the Assembly's hands. On August 25th, Trustee Bryan asked that a special attorney be appointed, and a complete overhauling of the finances was reported, showing the net income to be about £2,217. It showed the Provost getting £500 and the professors from £300 to £350, the whole salary list covering £2,886. Debts were owing to the University of £5,356, and the board canvassed the desirability of reorganizing the finances and providing a man to give his time to it, as both Financial Secretary and Treasurer; indeed, it was voted, but reconsidered and on September 15th, voted again, whereupon Justice Bryan ceased to be Treasurer. He was not present at but four meetings of the board during that year; and it might well be explained by his judicial labors combined with one of the greatest periods of political activity of his life, as has already been described.

In 1789, however, he was again at the old hall at Fourth and Arch Streets pretty regularly, and on February 4th, was on a committee on a faculty letter. He was not present on March 4th, when news came of the Assembly's order of restoration, but he was on the committee to find new build-

ings and that on separation of the property of the College trustees from that of the University.

For a University to be suddenly ordered out of its old buildings—although by no means to surrender all of its property, since that was so largely composed of confiscated estates—would ordinarily be a paralyzing experience. Fortunately for the University this was not the case. The American Philosophical Society, which had rented the old Church School House in Second Street on March 16, 1770, but, war disrupting their arrangements, in 1780 were using Carpenters' Hall. While here James Wilson was a Vice-President and Justice Bryan a councillor. On February 6, 1784, they began to look for funds to buy ground on which to build, and on March 19, 1784, decided to ask for a site on State House Square, and even asked the Library Company, later, to join them, having in mind a site on the Sixth Street side. Just a year later, March 28, 1785, a site was granted, but on the Fifth Street side, and by June 7th building plans were approved. The funds came slowly, but by this time, four years later, when the College buildings were ordered restored, it was nearly finished, and the Society was canvassing for tenants to provide an income, since they themselves proposed to use but two rooms. Here was a superior new structure right next to the State House and City Hall all ready for the University and on March 5th—the next day after Assembly action in the State House, the University ordered the committee to at once lease it.<sup>1</sup> On the 10th, the University board received a request from the College board, at Dr. Franklin's house, for a turning over of the property, by committees, and also received the news from Justice Bryan's committee that the new Philosophical Society building had been arranged for. This included all except two rooms on the south side, second floor, for five years, at £85 annually. The old "Lodge" in Lodge Alley was also hired on the 11th of March; and by the 14th the committee was ready to turn over the old college buildings and enter the new University

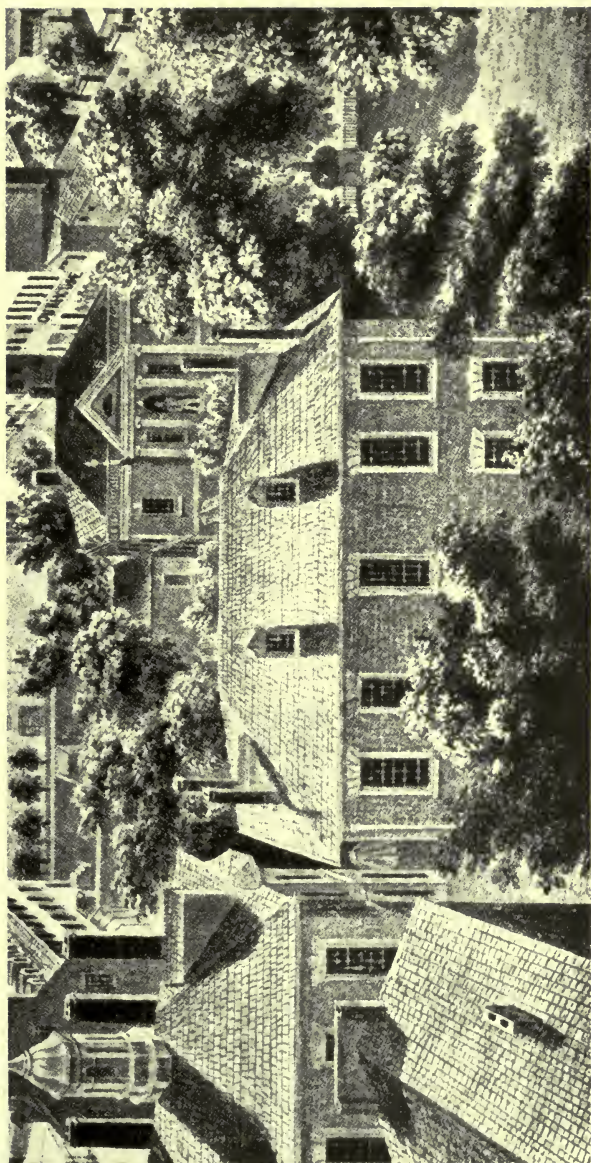
---

<sup>1</sup>The University secretary, having in mind the Sixth Street site application, wrote in the minutes "their house" in 6<sup>th</sup> Street," mistakenly.

building on State House square, on the following Thursday, so that delivery was reported by the 20th of March.

On April 8, 1790, reorganization began and one of the first acts of the University board at the new structure was to formulate a greeting to the new President, General Washington, on the 15th, who was on his way to New York. This greeting to the first head of the new "Federal Empire" was signed by all the board, including Justice Bryan; and on the 20th of April they went to the City Tavern, where he stopped, in Second Street, and presented the address and received the President's reply—both of which were spread on the minutes. During this year Justice Bryan was present at board meetings about every other meeting. He was present on June 25th, when gowns were first ordered for students and at the commencement held in the German Church on July 30th, as well as the board meeting in which real estate matters were reorganized. On October 31st, he took part also in the reorganization of the Medical School and on December 19, 1789, when Dr. James Hutchinson was chosen to succeed Dr. Benjamin Rush, resigned. The University graduation in July, following (1790), included, Bachelor of Arts, 9; Doctors of Medicine, 12; Masters of Arts, 8; Honorary Masters of Arts, 2; and Doctors of Divinity, 2. At the same time it was ordered that a degree of Bachelor of Medicine should close the course, with the presentation of a thesis to convert it into the degree of Doctor of Medicine. This commencement, also, was held in the German Church in Race street. It will thus be seen that, although the Wilson "junto," as *Centinel* called it, had its property back, the University was prospering much as if nothing had happened, up to the close of 1790, thus far considered; and, indeed, in its new location had somewhat increased prestige; for by this time the new national government was in the same square, at the farther corner, and President Washington located at Market, below Sixth Street.

Justice Bryan's activities, however, at this time, were devoted far more to political education, than in that represented by the University. The Assembly, on March 20, 1789, had issued an "Address To Citizens of Pennsylvania"



THE UNIVERSITY OF PENNSYLVANIA IN 1789  
(now the American Philosophical Society)

A rear view showing the Philadelphia Library facing and opposite it, on Fifth Street





to the effect that if people wished, they would provide a mode for calling a convention for revision of the state constitution, without regard to the septennial Council of Censors. Four days later they did provide a way, by which, on October 13th, when Assemblymen were elected they could elect delegates, which, when done, would be met by Assembly provision for expenses and other details of it. When these activities began to take form late in the summer, *Centinel, Revived, No. XXV*, appeared on August 27th, in the *Gazetteer*, as usual. This time it was to take part in the Madisonian efforts in Congress to provide the ten amendments for submission to the people. He feels called now, as he "was the first person who apprized the public of the defects and dangers of the new constitution, and was greatly, if not wholly, instrumental in occasioning that enlightened, virtuous, and formidable opposition, to the implicit and unqualified establishment of this government, which nothing could have rendered ineffectual, but the magical influence of the name of Washington" which diverted people from examination. He says it is very flattering to him that his fearless attack had won these amendments. He also asserts that "the author of the *Centinel* wrote without concert with, or assistance by any other person;" and yet every defect he had pointed out had been recognized and was now about to be provided for. This would seem to confine the *Centinel* to Samuel Bryan's authorship alone; but, it would not affect the fact that he was his father's voice; and that does not detract from the credit of his ability, in being so intelligent as to be able to do so. He now warns against an expanded national "CIVIL LIST," in capital letters. He proposes to insist on more amendments than are proposed; and still clings to his previously expressed ideas in favor of a less centralized government. He also proposes to have something to say about national judicial appointments in Pennsylvania.

On the 29th of August, *No. XXVI* appears, signed, as usual, "Centinel, Revived." This time he praises "the inimitable abilities and overflowing eloquence" of "a Madison," who is prevailing over "the insolence of federalism" in proposing amendments. The danger of "consolidation"

he thinks not yet provided for in the amendments proposed, and he quotes James Wilson's own admissions, but not in their connection; and he reiterates some of his own earlier arguments. He again, also, refers to the judiciary section and sees complete destruction of the powers of the state judiciary. No. XXVII, on September 4, 1789, shows great dissatisfaction with the proposed amendments, and deprecates the tendency of the people to view this consolidation without alarm just because President Washington heads it. Then he brings out a new point of danger, in no provision for rotation in office, which would keep one man or set of men from remaining in office too long. He cites the old constitution of Pennsylvania as a model in this respect. He also uses his enemy's old argument against mixture of the three powers, or two, in one body, using the national senate as violating this law, for it is legislative, executive and judicial in certain respects. The executive, too, should be absolutely separate; but a standing army so independent of the people is not to be endured.

The power of Congress over the militia is a great danger, too. *No. XXVIII* follows closely, as if in order to influence Congressional action in adding more to the ten amendments. This appeared on September 8, 1789, only four days later than the last issue. Here he drops the national issues, as though they were so nearly settled, as they were on the 15th, and turns to "this daring measure" of annihilation of the Pennsylvania constitution "at once;"<sup>1</sup> They seem intoxicated with power, he thinks, and recalls how this "junto" has sought for a dozen years to destroy this old, but new constitution. People well knew what to expect, for the first session of the Council of Censors of 1783, which the people repudiated, made plain what they proposed. The address of the dissentients of the present year, in Assembly, was calculated to head it off, but the conspirators have become more shrewd and have secured petitions in such numbers as to be ground for their new scheme. And yet 6000

---

<sup>1</sup> Dr. Benj. Rush, in his diary, Sept. 15, 1789, says: "The motion for this measure [the state constitutional convention] originated last spring in my house on an evening which James Wilson, Gerardus Wynkoop, Thomas Fitzsimmons and William Maclay spent with me."

petitioners out of 69,000 ought not to be enough to do so. He asks that it be left to the Censors, who meet only next year, 1790, and avoid the dangerous expedient of calling a convention, as he wants to prevent them doing on October 13th. He sees swollen state and national establishments both rising. He says "James the Caledonian" tried to change the election laws for their purposes, but was defeated.

The next day, September 9th, another is issued—*No. XXIX*. And as the issuing of the ten national amendments is impending, he devotes himself to their inadequacy, noting three or four of them, that are Machiavellian in their deceptive nature; indeed that Italian would be lost in admiration at these successors of his who make his own schemes mere "piddling devices." He also warns against these "Cæsars of America." Quickly upon the heels of *No. XXIX* comes *No. XXX* on the following day. In this he shows how currency will be drawn away from distant parts of the empire to the seat of government—of course having in mind New York or Philadelphia as that seat—and he cites London and Paris as examples. How much worse in a great land, beside which France is but a province! He is not for dissolving the union, but so amending this constitution as to give Congress only such power as is absolutely necessary.

Two days later, the 12th, *Centinel's XXXI* number appeared, and with a fervor of alarm against the "Junto's" Assembly's course, in calling a new convention to destroy the state constitution, that he calls it "high treason." "They ignore the plain provision of the Council of Censors in constitutional revision. This was a careful provision of "the authors of our invaluable constitution," to prevent legislative infringement on fundamental law, such as this. "These sworn guardians of the constitution" overturn that instrument and turn from it to less than 10,000 petitioners out of 69,000 for their justification. So can a constitution be subverted! On the 15th *No. XXXII* exclaims at a constitution being blown away by the mere breath of a legislature! 59,000 people to have their government overturned at the voice of 10,000! He cites the conspiracy case in Northamp-

ton County for illustration. He waits until the 28th of September to issue *No. XXXIII* and tells of what a row his exposures of the Northampton case has caused about the heads of the "city junto." He calls upon the people to protect themselves: "Where," he exclaims, "is the pusillanimity that is so crouching, which will not rise into heroism at the recital of the magnanimity and overwhelming force of French patriotism, before which *aristocracy*, with its formidable phalanx of partizans and numerous legions of mercenary soldiers, was instantaneously routed and disgraced. He tells them to take warning from France and, while it can be done, keep the aristocrats from assuming the power that makes the French horrors a necessity. He says absence in the country caused his delay in replying to critics.

These things brought libel charges against Editor Oswald in July, '89, in the local court, which was put forward to the supreme Court. It will suffice at this point, since *Centinel* himself will tell the story more vividly, later, to say that when the court were taking action on it, Justice Bryan, alone, of the four, refused to sign, the case being set for November 19, 1789, when neither side's attorneys could or would appear.<sup>1</sup>

*Centinel* becomes historical in his thirty-fourth letter, which appeared on October 28th. A brief sketch of the "junto" of aristocracy and the "well-born"—Mr. Adams' term which he ever keeps in evidence—since 1776. He says a great mass of Pennsylvanians were inclined to avoid a break with the British and tried to prevent establishment of a rebel government. Nothing but intimidating decision by the Whigs would have kept the colony from remaining British. Then was the constitution framed by the Whigs, because the timid and disaffected had withdrawn themselves. Then the timid "junto" tried to prevent the opera-

---

<sup>1</sup> Mrs. George Bryan, on November 30, 1789, in a letter to her son, George Jr., who is at his Uncle Arthur Bryan's in Dublin, tells of the ravages of influenza: "Indeed I have been alarmed for your father, as it clung to him long, and affected his eyes, so that he could scarcely see; else he would write you more fully." She speaks of Aunt Newport at Waterford—evidently her husband's sister; also Aunt Betsy and Nancy and Uncle Samuel; and speaks of Henry Street, Dublin, as the family home.—Papers in possession of Strickland Kneass, Esq., Philadelphia.

tion of the constitution, and kept it up even in the face of invasion. Then they sought place in the government without an oath of allegiance to the constitution. Then they got possession of the government by various means and tried to make the constitution detestable by not recognizing its provisions. Finally some of their allies like the Quakers saw through it and called them down. Now the "junto" is trying to tear down that constitution and erect one that will more easily do their will, by making it conform to the federal constitution. When they are attacked they abridge the freedom of the press with the charge of libel.

Then follows his account of the case against Oswald, before mentioned, although he mentions no names. This, he says, raises a new doctrine of "constructive contempts," which is to supersede trial by jury. He says the printer was confined in jail during the hot season, on the ground of having published something relative to a case in court. "Here," says *Centinel*, in one of the most eloquent tributes to Justice Bryan that can be found, so lofty indeed that it may well have been the product of filial devotion,—"Here I cannot help expressing my most feeling regret, that a character who stood high in the opinion of his country [McKean], and for whom I have the sincerest attachment, should be so blinded by his resentments of newspaper attacks, as to become subservient to the junto in bereaving us of that first of blessings, *a free press*. I wish, for his own good, as well as the public liberties, that he had been governed in his conduct on this occasion by the enlightened patriotism and magnanimity of Judge Bryan, who, notwithstanding he has been more vilified and traduced than any man living, through the press, yet he has ever stood forth the firm and inflexible assertor of the liberty of the press, from a thorough conviction, founded on the experience of the ages, that there is no human tribunal so virtuous, independent and perfect, as to be intrusted with the power of drawing or applying the line of distinction between the licentiousness and the salutary freedom of the press; and from a like persuasion that the inconveniences of the former is a small, but absolutely necessary price for the inestimable benefits of the latter; because in-

tegrity will generally triumph over the most envenomed shafts of malice and calumny and return them with accelerated force upon the base transgressors; and because the scourge of a free press is the most effectual restraint upon the venal and ambitious, the most powerful vindicator of the injured and oppressed, and the greatest bulwark of every privilege, whether of a civil, religious, or political nature.

"This gentleman" [Justice Bryan], he continues, "is himself a striking instance that virtuous innocence has nothing to apprehend from the liberty of the press; it is conscious guilt alone that ought [to] and does abominate the enlightened eye of inquiry, and therefore ever labors to extinguish it; whereas innocence courts the light as the element in which she appears to the greatest advantage. Judge Bryan has been for a series of years the constant object of the most rancorous abuse, levelled at him by the most ingenious, artful as well as malignant of parties. He, from the sublime heights of virtuous and exemplary integrity, looked down with ineffable contempt on all their noisy, impotent malice; and, having the approbation and support of conscious innocence, he enjoyed an uninterrupted tranquility of mind amidst the slanderous and calumniating shower that poured on his character. And he, moreover, had the satisfaction to find he has been as little injured in the opinion of his fellow citizens, as he was in his own feelings, which his enemies have been so thoroughly convinced of, that they have ceased abusing him for a twelve months past. Judge Bryan, with the greatest possible provocation, has too enlightened a patriotism to be exasperated into a concurrence in destroying the liberty of the press." — *Centinel* evidently feels grieved at the course of Chief Justice McKean, and his final word of warning is against the three leaders of the new state convention, though not naming them, but meaning for two, Wilson and perhaps Lewis, but for the third, evidently McKean, his pen refuses to characterize so freely—"Friendship arrests my pen, and will not permit me to proceed."

With this tribute to his father, Justice George Bryan, Samuel Bryan, as *Centinel*, seems to have closed his famous

papers, on the eve of the new state constitution convention, that would undoubtedly destroy the old, but new constitution, which Justice Bryan had so long and so ably defended. The overwhelming majority that followed Mr. James Wilson, in that body, meant that the old order in Pennsylvania was gone for good; and when the new constitution was put forth for public consideration, the new political science, of which Justice James Wilson was the creator, more than any other man, was as fully expressed in the constitution of Pennsylvania, as in that of the United States. This instrument was worked over all winter, and, after a recess in early summer, was finally signed and adopted on September 2, 1790. Two months later the new national and state governments were in operation at State House square, and on the evening of December 15th, Professor Justice James Wilson began at the hall of the College of Philadelphia, at Fourth and Arch Streets, scarcely two squares westward of Justice Bryan's home, the first scientific exposition of the new American political science. Fifteen days later, on December 30th, 1790, Justice Bryan met with the board of trustees of the University at State House square, and joined in congratulations to Governor Thomas Mifflin on his election under the new constitution—a meeting which proved to be the last one for this trustee, who had led in giving it its state university character.<sup>1</sup>

Fifteen days later, January 15, 1791, while Justice Bryan was sitting with a full bench of the Supreme Court for the last time, the trustees of the College of Philadelphia at Fourth Street were sending a letter to the University board, saying that it was said that a disposition on the part of the University existed in favor of a union of the two institutions. This, with no concurrence of Justice Bryan, for he could no longer be present, was considered by the University

---

<sup>1</sup> Professor James Wilson was chosen Professor of Law in the new institution also, but he never acted in that capacity, tho', technically, he held the chair until his death. So neither Wilson nor Bryan had to do with the new University after the union. Chief Justice McKean and Justices Bryan and Rush, on December 20, 1790, report that: "In half the counties there has not been a single conviction for any capital or other offense," "nor a single indictment"—and in the rest of the counties far less than before; and that the people "are contented with their present constitution," etc.—The McAllister Papers, Ridgeway Library.

on February 5th, and, although denying that the subject of union had ever been considered, they would now appoint a conference committee. A meeting was held on February 24th between the two institutions' representatives with success. The University graduated 33, exclusive of honorary degrees, and had 223 students, mostly advanced, the largest number since 1780. The negotiations continued during the year and by September 19th an equal division of each institution in board and faculty, but a retention of the University name, and the Governor as, *ex officio*, president of the trustees, left the stamp upon it that Justice Bryan was the chief instrument in placing there in 1779-80. The act of union and creation of a new institution was passed September 30th, and the first board meeting was held on November 8, 1791, in the office of the Secretary of the Commonwealth; but neither of the two men, Justice Bryan or Justice James Wilson, were a part of the new board of trustees. Yet each left his mark upon the University of Pennsylvania, forever; but it is now the "University of Pennsylvania" because of the great high-minded Whig of the revolution, Justice George Bryan.

As has been said, this valiant Whig legislator, executive and jurist, in his red robes of office in the arched Supreme Court room at the State House, with Chief Justice McKean, and Justices Atlee and Rush, sat for the last time in a regular session, during the January term, from the 3rd to the 22nd, inclusive. For, since the previous month, December 7, 1790, when the new constitution of Pennsylvania went into effect, Justice Bryan, by action of the schedule, had been a Justice of this bench, with all the rest of the court, under the constitution against which he had made so long and tenacious a fight.<sup>1</sup> There had been no

---

<sup>1</sup>At the first session of the new Pennsylvania Senate, Samuel Bryan was one of the candidates for Clerk of that body, but Timothy Matlack was chosen by a majority, receiving only 9 votes to Bryan's 7, out of 17 voting.

Samuel Bryan lived at 163 Arch Street in 1793, according to a contemporary Philadelphia directory, as "Gentleman;" at 305 Market or High Street in 1794; and at 307 Market in 1795, when, on July 1st, Governor Mifflin appointed him Auditor-General. He lived there until 1799, when the family removed, with the state capital, early in November, to Lancaster. While there, on October 13, 1801, he was transferred by Gov. Thomas McKean to the office of Comptroller-General in which he served until October 15, 1805.



session of the High Court of Errors and Appeals for a year past, on account of the new fundamental reorganization of the state, so that just a year ago the 25th of January, the present month, he had sat for the last time in that highest of state tribunals, with Governor Mifflin, Chief Justice McKean, and Justices Atlee and Shippen, Justice Rush being absent; and this court was not to meet again, on account of state reorganization, when, as every member of the Bryan following would say, *mirabile dictu!* Benjamin Chew became its head, one of the Proprietary leaders whom they had confined! Surely this was a new era! But, when the Supreme Court session, above mentioned, closed on January 22, 1791, in the arched room at the State House, they were at once, on the 24th, called to the same room in a short criminal court session, with Chief Justice McKean, and Justices Atlee, Rush and himself, the last service Justice Bryan ever rendered as a jurist, after a decade of great usefulness to the state.

For, three days later, at his home at 223 Arch Street, near Third Street, on Thursday, January 27, 1791, the valiant lover of democracy and the old constitution passed away, after a short illness. Three days later, on the afternoon of Sunday, the 30th, at the old First Presbyterian Church, in the Buttonwood grove, on the corner of White Horse Alley, later Bank Street, and Market Street—a building almost as old as the late constitution—his funeral services were held, attended by representatives of state and national governments, at which the Rev. Dr. John Ewing, Provost of the University, and his long-time pastor and

---

He returned to Philadelphia and April 12, 1809, became Register of Wills, in which office he served until his death, in Chester County, on October 6, 1821.

His brother, George Bryan, Jr., who had been clerk of the Senate, was appointed Auditor-General by Governor Snyder at Lancaster on May 2, 1809, and continued to serve after the removal of the capital to Harrisburgh in October, 1812, serving also under Governor Findlay, and finally under Governor Hiestler, up to April 2, 1821, when he resigned, in the middle of that administration. George, Jr., had lived at 307 Market so late as 1798, and at 71 Spruce Street in 1799, going with the family to Lancaster late in that year. The Bryans, according to Judge Chas. I. Landis of Lancaster, lived for a time at what is now about 18 or 20 W. King Street, and later at what is now 131 N. Duke Street; but whether either were Vice-President Bryan's home during the revolution is not known. George, Jr., was a leading Democratic candidate for Governor but was defeated. He died at Lancaster, December 17, 1838. His wife was Anna Maria Steinmann. He has left distinguished descendants in the north and west.

friend, preached the funeral sermon, in which occurred the following:

“Our society [the Presbyterian Church],” said he, “this day mourns for the irreparable loss of one of her most respectable ornaments, snatched away by a hasty, and, to human appearance, an untimely summons. But God is holy in all His ways. His thoughts are far above our thoughts, and His ways above our ways.’

“It would argue a criminal inattention to the dispensations of divine providence, to be insensible of the loss that we sustain by the removal of the Honorable George Bryan, who was an honor to the Christian society of which he was a member, an ornament to the profession of Christianity which he made, the delight and boast of his private convixions, and a public blessing to the state of Pennsylvania.

“Formed by nature for a close application to study, animated with an ardent thirst for knowledge, and blessed with a memory surprisingly tenacious, and, the uncommon attendant, a clear, penetrating, and decisive judgment, his mind was the store-house of extensive information on a great variety of subjects. Thus endowed and qualified, he was able, on most occasions, to avail himself of the labors and acquisitions, the researches and decisions of the most distinguished luminaries that had finished their course, and set before him. You could, therefore, with confidence, generally depend on his judgment, as the last result of laborious investigation and mature decision.

“And if you add to these natural and acquired endowments, the moral virtues and dispositions of his heart, his benevolence and sympathy with the distressed, his unaffected humility and easiness of access upon all occasions, his readiness to forgive, and his godlike superiority to the injuries of a misjudging world (in imitation of his divine master, who, when He was reviled, reviled not again), his inflexible integrity in the administration of justice, together with his exalted contempt of both the frowns and the blandishments of the world; you will find him eminently qualified for the faithful and honorable discharge of the various public offices which he filled with dignity and reputation, even in

the worst of times, and in the midst of a torrent of unmerited obloquy and opposition.

“Such an assemblage of unusual qualifications and virtues, as adorned the character of our departed friend, but seldom unite in a single man. So that in the fall of this distinguished character, his relatives and friends, his private connections and acquaintances, and the public in general, mourn under an accumulated loss.

“While the widowed partner of his voyage through the stormy ocean of life mourns for the loss of a tender husband, and the deserted pledges of their conjugal affection will have cause to remember, with gratitude, the watchful care of a tender parent; religion has lost an amiable example, science a steady friend, and public justice an impartial and incorruptible judge.

“Such he was, such he lived, and such he died; and is now gone to that bountiful master whom he served, to receive, we trust, the reward of his fidelity in the land of peace and joy, where ‘the weary are at rest, and the wicked cease from troubling.’

“Let us, then, imitate his virtues, and prepare for our summons to the invisible world; remembering that ‘our Lord comes at such an hour as you think not; and that His reward will be with Him, to give everyone according to the deeds done in the body.’”<sup>1</sup>

---

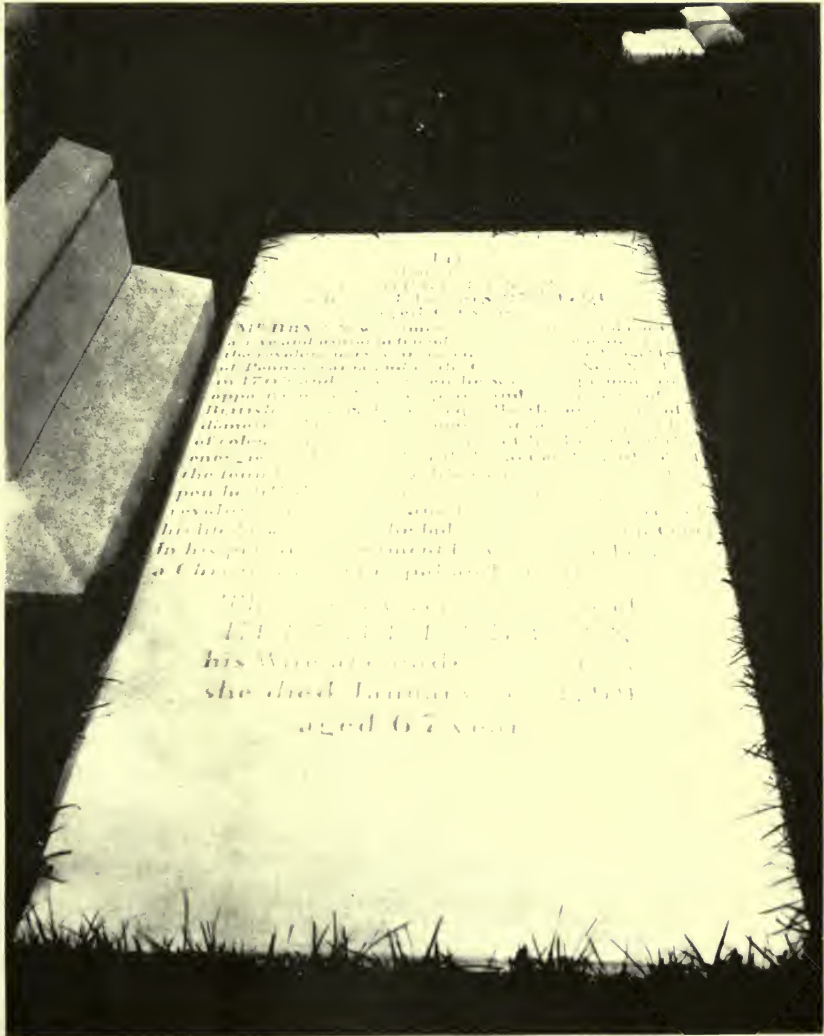
<sup>1</sup> Carey's *American Museum*, Vol. IX, p. 82. A fine tribute from his fellow Justices, Chief Justice McKean, and Justices Atlee and Rush, the next day after the funeral, January 31st, in an appeal to the Speaker of The Assembly for a pension to Mrs. Bryan. “The unfortunate situation, to which the family of the late Mr. Justice Bryan is reduced by his death, is known to the other Judges. Affection for our departed brother, a recollection of the many important stations in government that he filled with reputation, both before and since the revolution, and a respect for the eminent services by him rendered to Pennsylvania called upon us to inform the Honorable House of Representatives, that he has died very poor, leaving an aged widow and seven children. — The last twenty-five years of his life have been spent chiefly in the public service, but the small compensation allowed him did not afford the means of laying up anything for a future day, notwithstanding the most rigid economy used. Those who merit well of the public should meet with public countenance and support. The widows and descendants of military gentlemen are deemed worthy of an allowance, on account of the past services of the deceased, to the amount of half their pay; and we humbly conceive many instances may occur in civil life, where the like bounty would be as meritoriously bestowed. — To the humanity and generosity of the Honorable House we beg leave to submit the cause of this deeply distressed family, flattering ourselves they will give another instance of the liberality of Pennsylvania to her faithful servants.” The committee report on it, on March 1st, while most sympathetic, did not see a way clear to set such a precedent, but referred it, indirectly, to the executive, to whom, it would seem, under the new order, the distinguished Justices should have sent it in the first place.

His remains were interred in the old Presbyterian cemetery on Arch Street, at Fifth, just two squares from his home and one from the institution, which so long before and after this event bore the name he gave it, the University of Pennsylvania. And on his tomb was inscribed the following legend: "In memory of George Bryan, who died 27<sup>th</sup> January, 1791, aged 60 years. Mr. Bryan was among the earliest and most active and informed friends of the rights of man before the Revolutionary War. As a member of the Assembly of Pennsylvania, and of the Congress at New York, in 1765, and as a citizen, he was conspicuous in opposition to the stamp act and other acts of British tyranny. He was equally an opponent of Domestic Slavery. The emancipation of the people of colour engaged the feelings of his heart and the energies of his mind, and the Act of Abolition, [which] laid the foundation of their liberation, issued from his pen. He filled several important offices during the Revolutionary contest, and for the last eleven years of his life he was one of the Judges of the Supreme Court. In his private deportment he was exemplary,—a Christian in principle and practice."<sup>1</sup>

On the following Wednesday, February 2, 1791, the *Pennsylvania Gazette*, a conservative paper, holding the place in Philadelphia now held by the *Ledger*, said: "Died: On the 27<sup>th</sup> ult., after a short illness, in the 60th year of his age, the Hon. George Bryan, Esq., one of the Judges of the Supreme Court of this commonwealth. He was a native of Dublin, in the Kingdom of Ireland, and the eldest son of an ancient and very respectable family of that place. In early life he became a citizen of this country, and has resided for nearly forty years in the city of Philadelphia. He arrived in America with the best prospects, and entered an active and extensive field of commercial business. But the misfortunes of persons abroad unexpectedly inducing him to withdraw from that profession, he retired, with only a sufficiency to pay his debts. From this period, he became more

---

<sup>1</sup>At the vacation of the cemetery on December 5, 1867, the tomb was removed to Lot 13, Section C, Laurel Hill Cemetery, Philadelphia. Mrs. Bryan died on January 5, 1799, and was buried with him.



THE TOMB OF JUSTICE BRYAN AND HIS WIFE  
 in Laurel Hill, Philadelphia  
 to which they were removed from the old Arch Street  
 Presbyterian-burial ground



than ever devoted to an honest and honorable simplicity, worthy of the best and purest days of the old republics. Inattention to private pursuits, his activity and intelligence were now almost wholly directed to the public weal. Previously to the Revolution, he was a Representative in the General Assembly of Pennsylvania, and a delegate in the Congress which met at the city of New York, in 1765, for the purpose of petitioning and remonstrating against the stamp act and other arbitrary measures of the British Parliament. In the late contest, he took an early and active part with his country. When, by the declaration of independence, it became necessary to erect governments upon the authority of the people, he was appointed Vice-President of the Supreme Executive Council of this commonwealth, and, by the unfortunate death of the late President Wharton, in May, 1778, he was placed at the head of the government in Pennsylvania, during the summer and autumn of that turbulent and eventful year. His office having expired by the limitations of the constitution, in the autumn of 1779, he was elected a member of the Legislature. In this station, amidst the pressing hurry of business, the rage and clamor of party, and the tumult of war and invasion, in despite of innumerable prejudices, he planned and executed the 'act for the gradual abolition of slavery'; a monument, which, instead of mouldering like the proud structures of brass and marble, bids fair to flourish in increasing strength.<sup>1</sup> He was afterwards appointed a Judge of the Supreme Court, in which office he continued till his death; and, during the exercise of it, he was, in 1784, elected one of the Council of Censors, under the late constitution; of which body he was (to say the least) one of the principal and leading characters. The strictures upon the proceedings of the government of Pennsylvania and its different departments, for the seven years last past, which it was the business and duty of that council to make, will be found to contain those principles of liberty and order, which will ever demand reverence and attention. Besides the offices which have been enumerated,

---

<sup>1</sup> The discussions of the new constitution, as to the year 1808 and slavery, gave great hopes of its full abolition, nationally, at this time.

he filled a variety of public, literary and charitable employments, in some of which he was highly active and useful. In his person, he had, for many years, exhibited visible marks of weakness and decay; but his mind ever remained unruffled and unbroken. The firmness of his resolution was invincible, and the mildness of his temper never changed. His knowledge was very extensive; the strength of his memory verified what has been thought incredible or fabulous, when related of others. His judgment was correct, his modesty extreme, his benevolence unbounded, and his piety unaffected and exemplary. His family will ever remember the kind husband, the affectionate and indulgent father; his friends, the entertaining, assiduous and instructive friend. If he failed in any duty, it was that he was possibly too disinterested:—his own interest was almost the only thing he ever forgot.”<sup>1</sup>

This was the man, of whom, more than a dozen years later, in a celebrated case of impeachment of Justice Bryan's successors on the Supreme bench, Alexander J. Dallas, in his eloquent defense of that bench before the Senate of Pennsylvania, said, in citing an early unanimous action of the court in the first Oswald case, “in that unanimity,” said he, “will be found the name of a gentleman [Justice George Bryan], whose memory will last as long as liberty has an advocate!”<sup>2</sup>

This distinguished Pennsylvanian and man was many-sided and of large mould, and will be remembered for other

---

<sup>1</sup>This also appeared in other papers. *Oswald's Gazetteer*, January 29, 1791, said: “In him the public have to regret the loss of one of the most upright, sensible, and experienced Judges on the bench; the friends to liberty, an able and sincere advocate; his disconsolate widow, an affectionate and kind husband; and his children, a tender and indulgent parent.” The absence of any better description of Judge Bryan—for none has been discovered—than the very inferior old portrait on wood and the cartoon, is partly accounted for by the remark of Judge George S. Bryan, U. S. District Judge at Charleston, S. C., to Chief Justice James T. Mitchell, that Justice Bryan had in later life erysipelas or some kindred skin trouble on one side of his face, which kept him from sitting for a portrait. It will be seen that both the portrait on wood which was no doubt made from memory as the cartoon was, and the cartoon are of the left side of the face. Judge George S. Bryan, the grandson, said Judge Hopkinson and Justice Bryan were warm personal friends, notwithstanding their political differences.

<sup>2</sup>*Hamilton's Law Trials*—2, 1805, pp. 238-9. The day before Justice Bryan's funeral, his colleague on the High Court of Errors and Appeals, President Judge (of the Philadelphia court) Edward Shippen, was appointed his successor on January 29, 1791. There were four Justices for the next eighteen years, or until the death of Justice Thomas Smith on March 31, 1809, when they returned to the previous number.



things as well as liberty. As a man of learning he was a leader and official in the American Philosophical Society; and when the revolution made it necessary he created the University of Pennsylvania out of the old College of Philadelphia and has left the stamp of the commonwealth upon it ever since. This alone should place his portrait upon the walls of that institution and his statue upon her campus. She is the University of Pennsylvania because George Bryan made her so, and nourished the institution in her financial and legal relations for a decade.

Few men have done so much for the people of Pennsylvania. He it was more than any other man, who defended and preserved the great work of David Lloyd and his constitution of 1701, under which the colony flourished in almost republican freedom for seventy-five years; and he did so even more by securing its extension into the days of the republic by merely replacing the authority of crown and proprietary by that of the people, with but few other modifications, and then defended and preserved it in its new form for over fourteen years more; defended it with such power and skill that it required the adoption of the national constitution and creation of a new national government to displace the revered old vehicle of Pennsylvania's liberties for within a decade of a century. Such a contest gathers even greater significance, as to his power, when, in defense of the first form, he resisted a Franklin successfully; and as a defender of the second form only finally yielded to the brilliant power of that father of the Constitution of the United States and of the later one of the state, James Wilson, but only after a contest of more than a dozen years. In all this he stood for that political science, now represented in the British government, and believed by many, in its flexibility to the public will, to be the ideal government—a political science that still contests the field with that represented by the government of the United States and the oldest constitution in the world.

In the government of the American people, George Bryan was, on the one hand, among the earliest patriots to spring forward in the defense of their liberties in the

famous Stamp Act Congress and enroll his name upon their famous protests as well as upon the non-importation agreements which supported them;—or, on the other hand, was among the most vigilant and prominent of those at the last, who insisted on the first ten amendments to the great constitution which created a nation nearly a quarter of a century later.

As a constructor or reconstructor of a state, the realizer in governmental form of the principles of liberty he advocated and put in or kept in state constitutions he was not less powerful. No man, so much as he, determined the form of the first state constitution under the revolution. Because of this he became so dominant a figure in the plural executive that for three years he was practically chief executive, even when he had the title of vice-chief executive. His term ended in the executive department, where he had set precedents during the most stormy period of the revolution, he was at once made the chief legislator in reorganization of the new state to a degree never before known, probably, in republican annals. His term there ended, he was called to be a jurist on the highest tribunals of the state, he had almost individually reorganized, there to interpret and apply the constitution and laws he had been so instrumental in creating. Such an experience has been vouchsafed to but few men in all history. His portraits witness to these things on the walls of the Governor's room at Harrisburg, on those of the Supreme Court room at Philadelphia, and only in the legislative halls are they still unrecognized. The very bounds of Western Pennsylvania were determined by him more than any other man. If any statue is to grace the state capitol grounds, that of George Bryan should be one. As far as the state of Pennsylvania is concerned, George Bryan must ever be one of the noble group which includes a William Penn, a David Lloyd, a James Wilson, a Franklin and a Dickinson.

His greatest claim to immortality, however, is as the first and truest emancipator of a race of slaves from the commonwealth of Pennsylvania. No man would belittle or reduce one iota from the fame of the great man who freed



GEORGE BRYAN AND ABRAHAM LINCOLN

The one began and the other completed the Emancipation of the Negro Slaves  
in America

Original of Bryan in possession of George B. Logan, Pittsburgh  
The Lincoln, from a Reynolds mezzotint



the slaves of the United States over eighty years later, in 1863; nor does it reduce the dimensions of that great act to recall that Abraham Lincoln himself said he was not there as President and commander-in-chief to free the slaves; if he could save the union and save the institution of slavery, he would do that; if he could save the union and free the slaves, he would do that; and it is well known that he finally freed the slaves only as a war measure. It was men like William Lloyd Garrison who sought, in season and out of season, to remove the stain of slavery from the rest of America as George Bryan had removed it from Pennsylvania. George Bryan was both a Garrison and a Lincoln to the slaves of the Keystone commonwealth. He not only advocated it in season and out of season, recommended it as an executive, but personally wrote the act himself, and, with a power unique in legislative annals, secured its passage as leader of legislation, and finally interpreted and applied it as a jurist, always giving the slave the benefit of the doubt.<sup>1</sup> Pennsylvania, led by her law-giver, George Bryan, set the standard for the rest of the world in the first law for emancipation of the negro. Is there any colored institution in America, or anywhere else, where the portrait of George Bryan does not hang beside that of Abraham Lincoln? Is it possible that the great state of Pennsylvania has no statue of her great emancipator anywhere within her bounds? Is it also possible that no statue of the first American emancipator of slaves adorns the avenues of our national capital, where a Lincoln is so proudly honored? George Bryan did not secure the freedom of the slaves of Pennsylvania as a mere war measure. Gratitude for freedom from a foreign yoke by the revolution gave birth to the abolition act of 1780. "Impressed with these ideas," he writes in the preamble to the act, "we conceive that it is our duty, and we rejoice that it is in our power, to extend a portion of that freedom to others, which has been extended to us." He was proud that they could "this day add one more step to universal civiliza-

---

<sup>1</sup> In the case of *Res Publica v. Negro Betsy*, 1 Dallas 469, Justice Bryan concurred with Atlee and Rush in the liberal construction against Chief Justice McKean's more cautious interpretation, Bryan saying: "Upon a clause of so obscure a kind, I would not wish to press an argument against liberty."

tion by removing as much as possible the sorrows of those who have lived in undeserved bondage"; and it was a great moment, on that first day of March, when the shackles began falling off of the slaves of Pennsylvania, in the words of George Bryan and of the commonwealth:

"Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That all persons, as well negroes and mulattoes and others who shall be born within this state, from and after the passing of this act, shall not be deemed and considered as servants for life or slaves; and that all servitude for life or slavery of children in consequence of their mothers, in the case of all children born within this state from and after the passing of this act as aforesaid, shall be and hereby is utterly taken away, extinguished and forever abolished."

# INDEX





# Index

- Abolition Act, of Penna., 195, *et seq.*; Assemblymen voting for it, 197; 206; 213; 215; motive for, 363.
- "A Brief State"—of The Province of Pennsylvania, 32.
- Adams, John, 104; 115; book of, 311; 318; 336.
- Adams, Samuel, 157.
- Admiralty Court of Penna., 160; 161; and jury trial, 161; 207; jurisdiction, 208; 210; 215; 226-7; precedence in the High Court of Errors and Appeals, 255; 265; 277; 279;
- "Adrian," 242; 243-4-5-6-7; 247-8-9.
- Affirmations, 124 (see Test Oaths).
- Aix-la-Chappelle, peace, 13.
- Albany Convention 1754, 28-9; Governor Hamilton on, 28; 29; 30.
- Alison, Rev. Dr. Francis, 78; 79; 81.
- Allen, Chief Justice and Merchant, 27; 31; 53; 57; 59; 77; 295.
- Amendments, to National Constitution, proposed by the Harrisburg Conference, 331-2-3; compared with minority report of the Ratifying Convention, 334; submitted by Congress in 1789; 337; 347; 349.
- American Philosophical Society, 81; 82; 83; 84; 215; officers of, 260; and the University, 345.
- American Political Science (see Political Science).
- American Society, 82; 83; 84.
- American Society for Promoting and Propagating Useful Knowledge, held at Philadelphia (see American Society).
- Amherst, General, 37; 45; 47.
- Andrews, Robert, and the Virginia-Penna. boundary, 175.
- Annapolis Convention, 281; 298; 302.
- Annexation of West, to Quebec, 99.
- Anti-Constitutionalists, Penna., of 1776-1787, 139; 172; 233 (see Bryan, George), 300; 301; 343.
- Anti-Federalists, 305; 307; 308; 310; 311; 313; 316; 320; 321-2-3; 334.
- Anti-Proprietary Movement, 13; 14; 15; 27; 30; 31; 32; 33; 36; 37; 38; 40; 44; 45; 46; 47; 48; 49; 50; 51; 52; 53; 54; 58; 63; 67; 76; 77; 79; 80; 82; 86; 92; 105.
- "Aristocratic Party" (see Republican Society, Wilson, James, *et al.*), 300; 301; 303.
- "Aristocratists," 278.
- Arnold, Gen. Benedict, 160.
- Articles of Confederation (see Confederation, Articles of).
- Assembly Hall, second floor, east, 208.
- Assembly, powers, as a House of Commons, 4; 7; 8; 13; 28; and finance, 31; 32; 33; victory of, 37; and Mr. Pitt, 40; 44; 45; 52; 54; 85; 89; change in attitude, 105; anomalous position of, 106; and the west, 107; and county representatives, 107; 108; 109; 112; 113; 116; 118; 120; 126; 127; 131; 133; 134; 139; 140; 142; 149; 162; and slavery, 164; 168; 169; 171; 172; 173; 179; 184; Bryan leadership in, 187; 189; *et seq.*; 207; 208; 215; 217; 237; 238-9-40; 251; 258; 263; breaking quorum of, 267; 273; contest in, 274-5; 306; 307; 342; 346-7.

- Associators, 13; 116; 126.  
 Atlee, Judge Wm. Augustus, 142; sketch of, 225-6; 233; 234; 238; 240; 256.  
 Attainder, Act of, 152.  
 Authority, change of, in Pennsylvania, 116; 119.  
  
 Bache, Richard, 141; 172.  
 "Bachelor of Medicine" degree, University of Penna., 346.  
 Bailey, Editor, 250; 261.  
 Baltimore city, 1779, letter of Mr. Bryan on, 176.  
 Baltimore, Lord, 11.  
 Bank of North America, 233; 257-8; 264; 268; 270; attack on, 271 (see National Bank).  
 Bank of Pennsylvania, 233.  
 Bank of Pennsylvania, second, proposed, 264; 271.  
 Bayard, Col. John, 131; 137; 138; 162.  
 Berks County, 259.  
 Bernard, Gov. of N. J., 35.  
 Berkeley, Bishop, 18.  
 Bird, Col. Mark, 184.  
 Board of Trade, English, 4; 7; union proposal of, 29; policy of, 80; 118.  
 Bond, Dr. Thomas, 82; 260.  
 Boundary, western, of Penna., 143; 175-6-7-8-9; 183-4.  
 Bradford, Wm., lawyer, 234; 241.  
 British custom, 64; Commission Court in Rhode Island, 97-8; policy, 113-4; 123-4; offer, through General Howe, 150; finance, 324.  
 Bryan, Arthur and Samuel II, of Dublin, 18; 350.  
 Bryan, Arthur, of Philadelphia, 26; 147; 232; letter of, 278-9.  
 Bryan, Elizabeth and Nancy, of Dublin, 18.  
 Bryan, Mrs. Elizabeth Dennis (Mrs. George Bryan), 2; 18; letter to, 293.  
 Bryan, Elizabeth, Jr., 147; 232.  
 Bryan Family Bible record, 26.  
 Bryan, Francis, of Philadelphia, 26; 147; 232.  
 Bryan, George, 1; 2; 8; 9; 17; education, 18; merchant in Philadelphia, 19; advice of father, 20-21; 22; diary of, 22; dissolves partnership, 23; signs paper money, 24; asks release of Samuel Wallis from debtor's prison, 24; marriage, 24-25-26; children, 26; character of, 26-27; church membership, 27; 34; 36; 37; 40; first public office of, 40-41; 42; 44; 46-7-8-9; 50-1; candidate for Assembly, 54; 55; displaces Franklin in Assembly, 56; 57; 58; 59; a judge, 59; 60; 61-2; 63; 66; in Stamp Act Congress, 67; 70; report of, 71-2; 72; stamps and non-importation, 73; 74; 75; 76; 77; 78; 79; 81; 82; 83; 84; 85; failure of, as merchant, 87-8; character of, 88-9; 92; and David Lloyd compared, 93; as Judge, 93; 94; leader of the country, *vs.* city, 95; 98; 100; 102; 104; 106; 108; Port or Naval Officer, 109; 110; 112; 113; 115; 116; 117; 119; 120; 121; 122-3; 124; 125; 127; 128; 129; 130; 133; 134; 135-6-7; 138; 139; 140; 141; 142; 143; 144; 145; 146; 147; 148; 149; reply to Howe's offer, 150; 151; 152; 153; President of Penna., 153; 154; return with capital to Philadelphia, 155; 156; 157; 158; 159; 160; 161; 162; 163; and slavery, 164-5; as Vice-President again, 166; 167; appeal on slavery, 168-9; 170; and the Virginia-Penna. boundary, 175-6; letter of, on Baltimore, 176-7; 178-9; 180; 181; 182-3; 184; 185; last services as Vice-President, 186; resignation, 186-7; election to Assembly, 187; work as organizer, 187-188; leader of Assembly, 189; letter of, on slavery, 190-91-2-3-4; his Abolition Act, 195, *et seq.*; his many chairmanships, 198 *et seq.*; as reorganizer and Treasurer of the University of Pennsylvania, 200-201-202-203; 204; 205; 207; 208; 209; and the sloop *Active* case,

209-10-11-12; 213; 214; salary, 214; 215; 216; 217; total chairmanships, 217; extra salary to, 217; prestige of, 218; as jurist, 219; 220; 221; as a Supreme Court Justice, 221-2; titles of Justice and Judge, 222; "Fourth Justice," 226; 227-8; letter of, to Judge Atlee, 229-30-31; home of, 232; 233; letters of, to Judge Atlee, 234-5-6-7-8-9-40; and *The Freeman's Journal*, 241; as "Adrian," 242-3-4-5-6-7; as "A New Pope," satire on by Hopkinson, 248-9; 250; red and black robes of, 250; and The Council of Censors, 251; *et seq.*; 253; 254; 255; 256; Treasurer and Trustee of the University, 256; chairman of University finance committee, 257; 258; 259; a councillor of the American Philosophical Society, 260; member of Council of Censors, 260; 261; 262; reasons cited, 262; 263; called "midwife" by Oswald, 263; 264; and the "third" and "fourth" justiceships, 265; and the University, 266-7; public attacks on, 268; defenders of, 268-9; cartoon and satire on, 269-70; letters of, 271-2-3; 273; 279-80; 281; letters to, 282-3-4-5-6-7; pamphlet by, in French, 284; letter, opinion of, 288-9-90-91-2-3; letter to wife, 293-4; and the University, 294; on Dr. Rush, 294-5, foot-note; on Dickinson College, 295, foot-note; first published opinions of, 296-7; and the Long-champs case, 296; and the Dalby case, under the Abolition Act, 296-7; as "Justice Him," 298; and a new national constitution, 299, *et seq.*; leaders of, 299; and State Capital, 299; commissioned again, 299; impressions of constitutional convention period by, 301-2; 303; on the national constitution, 303-4-5-6-7; charged with authorship of the "Sixteen

Seceders" paper, 308; and the "Centinel" papers, 309; 315; 316; lampooned by Judge Hopkinson, 316-7; "servants" of, 317; intercepted letters of, published, 320-21-22-23; letter of, 324; and the celebration of the new national constitution at Philadelphia, 326; 327; and amendments to the national constitution, 327; and the Harrisburg Conference, 327-8; and the Conference Manifesto, 328-9; acceptance of the national constitution, 328-9; amendments proposed, 331-2-3-4; 335-6; attitude of to amendments, 338; only known official opinion of, 338-9-40; and the Oswald case, 339-40-41-42; and the University, 342; 344; ceases to be Treasurer, 344; on committee on new buildings, 345; and the University greeting to Washington, 346; and the *Centinel* libel case, 350; illness of, 350; foot-note; sister of, 350; family home in Dublin, Ireland, 350; tribute to, by *Centinel*, 351-2; cessation of abuse of, 352; and the University, 354; last service on the Supreme Bench, 354-5; illness and death, 355; funeral of, 355-6; eulogy of, by Dr. John Ewing, 356-7; tributes of his fellow Justices, and plea for his family, 357, foot-note; burial and notable tomb inscription, 358; tribute in *The Pennsylvania Gazette*, and sketch of, 358-9-60; tribute of Oswald's *Gazetteer*, 360; tribute of Alexander J. Dallas, 360; estimate of, 361-2-3-4; an officer in American Philosophical Society, 361; creator of the University, as such, 361; defender and preserver of the work of David Lloyd, 361; successful in defense against Franklin, but not against James Wilson, 361; his ideal similar to present

- function of House of Commons, 361; in Stamp Act Congress, 362; stood for first ten amendments to National Constitution, 362; reconstructor of a state, chief executive of a state, chief legislator, in highest courts, 362; ranks with Penn, Lloyd, Wilson, Franklin and Dickinson, 362; chief honor as first emancipator of slaves, 362; and Lincoln, 363; and Garrison, 363; portraits and statues of, suggested, 363; interpretation of Emancipation Act, as a jurist, 363; language of, in the Abolition Act of 1780, 364.
- Bryan, Mrs. George, I (see Bryan, Mrs. Elizabeth Dennis), 350, foot-note; death and burial of, 358.
- Bryan, George, Jr., 79; 147; 232; 350, foot-note; sketch of, foot-note, 355.
- Bryan, Jonathan, 147; 232.
- Bryan, Mary, 79; 147; 232.
- Bryan, Samuel, of Dublin, 1; 18; 19; letter of, 20-21; 22.
- Bryan, Samuel, of Philadelphia, 26; letter of, 133; 147; 232; clerk of Assembly, 232; and Philadelphia election, 259; secretary of Council of Censors, 260; clerk of Assembly, 263; again clerk of Assembly, 270; 274; letter of, 274-5-6-7; 281; 299; and the *Centinel* papers, 309-10-1-2-3-4-5-6-7-8-9; 320; 334-5-6-7; 347; authorship of *Centinel*, 347; 348; 350-1-2-3; candidate for clerk of Assembly, 354; sketch of, foot-note, 354-5.
- Bryan, Sarah, 26; 147; 232.
- Bryan, Thomas, 147; 232.
- Bryan, William, 147; 232.
- Bucks county, 259.
- Burke, Edmund, 89.
- Burn, Dr., on *Justice of The Peace and Parish Officer*, 340.
- Bute, Lord, 50.
- Cadwalader, General John, 180.
- "Cæsars of America," 349.
- Caldwell, Samuel, 260.
- Cannon, Prof. James, 117; 120; 121; 124; 125; 127; 131; 203.
- Capital, national, at York, 148.
- Capital, removal in 1777, from Philadelphia, 148; return to Philadelphia, 155; U. S., 288.
- Censors (see Council of Censors).
- Centinel* papers, No. I, 309; 310-11-12; No. II, 312-13; No. III, 313; No. IV, 314; No. V, 315; No. VI, 315; No. VII, 315-6; No. VIII, 316; No. IX, 316; No. X, 317; No. XI, 318; No. XII, 318; No. XIII, 318-9; No. XIV, 319; No. XV, 319; No. XVI, 319; No. XVII, 319; No. XVIII, 319; No. XIX, 334; No. XX, 335; No. XXI, 336; No. XXII, 337; No. XXIII, 337; No. XXIV, 337; 346; "*Revived*," No. XXV, 347; No. XXVI, 347; No. XXVIII, 348; No. XXIX, 349; No. XXX, 349; No. XXXI, 349; No. XXXII, 349; No. XXXIII, 350-51-2-3.
- Chairmanships of Assembly Committees, 198, *et seq.*
- Charles I and Ireland, 18.
- Charles, Robert, 27; 34; 39; 40.
- Charter of Pennsylvania, of 1681, 64.
- Charters, primary and secondary, 3; 7; 8; 53; and powers, specified and implied, 101.
- Checks and balances, 279-80.
- Chester county election case, 162; 163.
- Chew, Benjamin, 143; 226; Chief Justice, 295.
- Chief Justice, 9.
- Christ Church and Second Presbyterian, Phila., 25.
- Church of England, 51; 111; 183.
- Cincinnati, Society of, 304 (see also Society of Cincinnati).
- City House, or Hall, New York, 68.
- City Tavern, banquet to Gerard, 158; and Wilson riots, 185.

- Civil lists, in America (see Hillsborough, Earl of), in Pennsylvania, 214; in U. S., 347.
- Clinton, Governor, 12.
- Coin, drainage of (see Paper Money).
- Colden, Gov. Cadwalader, 67-8.
- Coleman, Judge William, 27.
- College of Philadelphia, 32; 82; 162; 179-80; 181-2; 184; 186; 200; 201 (see University of Pennsylvania), 207; restoration requested, 258; 261; 262; 270; restoration, 342; 344; 345; Professor James Wilson's lectures on Political Science and Law in, 353; desire for union with University, 353-4.
- Colonial Agent, 10; 12; assistant, 27.
- Colonial constitution, 95-6; 103; 104; 107.
- Colonial Office (see Board of Trade).
- Colonial period, close of, 110.
- Colonial policy (see Board of Trade).
- Colonial Union (see Union of Colonies).
- Commerce (see Paper Money and Counties' Statistics), 21; 28.
- Commissioners of Appeal, Congressional Supreme Court, 160; 211; 212;
- Committees of Correspondence (see Correspondence, Committees of).
- Committee of Safety, 109 (see Council of Safety), 130.
- Common Law and Equity, 127.
- Confederation, Articles of, 118; 149; 151; 152; 233; 240; 251; 252; 253; 257; 268; Wilson amendment to (see Wilson Resolutions of 1783), 179-80; 298; 302; 308; weakness of, 314.
- Confiscation of Estates, 172; 179.
- Congress, Continental, 107; 108; 109; 110 (see Continental Congress), 114; 116; 117; 118; 120; 121; 122; 124; 133; 147-8; 151; 152; celebration of Independence, 156; 158; Supreme Court of, 160; 161; 179; 213; 214; 219; finance of, 240; 251; and the power of the purse, 252; and mob, 253; 254; 258; 261; 271; 273; and Wilson Resolutions, 279-80; 281; letter on, 283-4-5; and North Carolina, 286; requisitions of, 287; 298; 300; 301; 303; 315; and new constitution, 326; proposes ten amendments to new constitution, 337-8.
- Connecticut claims, 168; 204; 206; 216.
- "Consent," *vs.* directive choice, 101.
- "Consolidation," 347.
- Constitutional Convention, National, 253; 280; 281 (see Annapolis Convention and also Wilson Resolutions of 1783), 298; George Bryan on, 300-1; rapid agreement for, 302; 303; 304; a second proposed, 312; 315; 320; 327-8; 330; 342.
- "Constitutionalists" (Penna.), 168; 189; 233; 263 (see Bryan, George and Wilson, James, also National Bank), 276; 278; 297; 301; 303; as Anti-Federalists, 305.
- "Constitutional Society," The, 174; 180.
- "Constitutional Whigs" (see Constitutionalists, Penna.).
- Constitution of 1696 (Penna), 5.
- Constitution, first, of the U. S., 117; second (see Confederation, Articles of); third (see Constitution, National).
- Constitution of 1701 (Penna.), 1; 3; 5; 6; 7; 8; 10; 11; 15; 17; 40; 52; 53; 54; 64; 74; 77; 83; 86; 92; 100; 101; 102; 108; 109; 110; 111; 112; 113; 114; 115; 117; 118; 119; 120; 122; 125; 126; 128; 129; 137; 138; 173; 217; 252; 279; 308; 343.
- Constitution (Penna.), 1776, 120; 121; 124; 125; 126; 127; 128; 129; 130; 131; 132; 136; 137; 162-3; 171-2; 173; 217; 218; 220; 233; 237;

- 240; 251; 252; 257; 258; 259; 260; 261; 263; 269-70; 279-80; 308; 316; 326; 343; fall of, 344; 348; 349; 350; 351; 352-3.
- Constitution of 1790 (Penna.), 353.
- Constitution, National, 253; 279-80; 303; chief supporters of, 304-5-6; ratification, in Pennsylvania, 306-7; opposition to, 307; *Centinel* on, 310; 311; 312; 313; 314-15; 318; 319; 320; 321-2; riots about, 322; attitude toward, in parts of Pennsylvania, 322-3; Henry, Monroe, Jefferson and Randolph, on, 324; established, 326; celebration of, in Philadelphia, 326; amendments, varying character of, 327; amendments proposed by Harrisburg Conference, 330-1-2-3-4-5-6; and by Congress, 337; in effect, 342; and state constitution, 351; 353; oldest in the world, 361.
- Constitution and laws, 8.
- Constitutions and Charters, 101.
- "Continental Congress," name used, 68; 74; 104; 105; 106; (see Congress, Continental), 107.
- "Convention," armed brig, 159; 160; 211.
- Convention, constitutional (Pennsylvania), called, 343; "address" on, 347; origin of, 348; 349; 353.
- Convention, National Constitutional (see Constitutional, Convention, National).
- Convention, Provincial Constitutional (Penna.), 108; 109; 110; 113; 117; 118; 124; 125; 126-7-8-9-30; 132; petition for new one, 141; 142-3; 145; new one, 159; 162-3; 170; 171; 173.
- Convention, Ratifying (Penna.), 313; 318; 333; minority report and protest, compared with manifesto of Harrisburg Conference, 333-4; 337-8.
- "Cool Thoughts," by Franklin, 50; 51.
- Cornwallis, Lord, surrender of, 234.
- Correspondence, Committee of, suggested, 97-8; 100.
- Council, Executive, and Lieutenant-Governor, 6; 8; 11; 13; 119; 126; 127; 133; 134; 137; 138; 139; 142; 148; 149; 151; 152; 154; 162; 167; 168; 169; 170; 173; 179; 181; 185; 187; 221; 252.
- Council, Legislative, 4; destroyed, 5; 6; 259; and Judge Hopkinson, 298.
- Council of Censors, 128; 129; 132; 138; 171; 173; 250; 252; 255; 257; 258; 259; and certain counties in, 259; 260; 262; 270; 312; 347; 348; 349.
- Council of Safety, 116; 130; 131; 133; 149; 151; 263.
- Council of State, 118.
- Counter-Revolution in Philadelphia, 133.
- Counties, statistics, 16; 39; 91; equal voting, 116.
- Court House, Philadelphia, 61; new, as capitol of U. S., 343.
- Court of Appeals, Congressional (see Commissioners of Appeals, Congressional).
- Courts, 38; of Philadelphia, 61; 62; 79; of state, 81.
- Cowpland, Judge Caleb, 27.
- Criminal Court (see Oyer and Terminer Court).
- Crown Counsel, 4; 6; 7.
- Crown government, desired (see Anti-Proprietary movement), 118.
- Cumberland county, action of, 109.
- Currency (Penna.), through individual notes, 80; depreciation of, 180; 216; wheat basis of, 256; national, 349.
- Dalby case, Philip, of Alexandria, 296-7.
- Dallas, Alexander James, 295.
- "Dangerous Persons," list of, 144.
- Declaration of Independence (see Independence).
- Declaration of Rights, in Penna., 119; 127.

- Delaware, defective title of Penn to, 5; defective union with Pennsylvania, 5; 11; constitution of, 225.
- DeMably, Abbe, 117.
- "Demophilus," letter of, 140.
- Dennis, —, of Philadelphia, 18.
- Dennis, Elizabeth (see Bryan, Mrs. Elizabeth Dennis), 2.
- Denny (Col. and) Governor William, 33; 34; 35; 37; 38.
- d'Estaing, Count, fleet of, 156.
- Diary of George Bryan, extracts, 22; described, 23; 37; 47-8-9; 50; 51.
- Dickinson College, George Bryan on, 295.
- Dickinson, John, 42; 43; 44; 46; 51; 52; 53; 54; 58; 59; 66; 67; 68; 69; 70; 71; 73; 74; 76; 79; 80; 83; 85; 90; 92; 100; 102; 103; 104; 106; 108; 110; 112; 118; 119; 120; 130; 140; 249; 251; 254; 265; 274; 312.
- Direct Trade with other than Great Britain, 57.
- Divesting Act (see Penn Estates).
- Dublin, 17.
- Dunmore, Lord, 99.
- Episcopalians, clergy of, 37.
- European economic conditions in 1788, 324.
- Evans, Governor (see Governor Evans).
- Evans, Governor, 6.
- Evans, Judge John, 143; sketch of, 226; 233; 234; 238; 240; 256; on Council of Censors, 258; death of, 265.
- Ewing, Rev. Dr. and Professor John, 78; 83; 88; 96; 143; 175-6-7-8-9; and University of Pennsylvania, 202; Pro-vost, 203; 260.
- Executive, single or plural, 259.
- Federal buildings, proposed, 287.
- "Federal Empire," 346.
- Federalist* papers, 309.
- "Federalists," 305; 306; 316; 318; in Pennsylvania, 319-20; 321; 322; 323; 324-5; celebration of, in Philadelphia, 326; 334; 335; 347.
- Financier-General, 251 (see Robert Morris).
- Findlay, William, 258; 278; 318.
- Finley and Finlay (see Findlay).
- First City Troop, Philadelphia, 185.
- First Presbyterian Church, Philadelphia, 25; 78.
- Fisheries and bounties, colonial, 301.
- Fitzsimons, Mr., on Council of Censors, 258.
- Five Nations, 10.
- Five per cent duty, 305 (see also Rhode Island).
- Flying Camp, 133.
- Forbes, General, 36.
- Forbes Road to Fort Pitt, and population, 92; and politics, 95.
- Fort Pitt (Fort Dunmore), 99.
- "Fort Wilson" riot, 185.
- Fothergill, Dr., 58-9.
- Frame (see Constitution of 1776).
- France, 12.
- Franklin, Benjamin, 11; 12; 13; 14; history of Indian treaties, 14; character of, 14-15; report on paper money, 16; 17; 21; 25; 27; 28; union plan of, 29; 30; 34; 35; 37; 38; 39; 40; 41; 43; 44; 48; 49; 50; 51; 52; 55; 56; 58; 59; 61; 63; 67; 75; 76; 77; 79; 80; 81; 82; 84; 86; 90; 92; 99; 100; 102; 104; 105; 106; 112; 118; 124; 130; 135; 136; 172; 173; 189; 260; President of Council, 274; effect of age of, 275; 299; popularity of, 303; 311; 345.
- Franklin party, 67.
- "Franklin" state, 286.
- Franklin, William, 14; 49.
- Freedom of the Press, 75.
- "Freeman," 64-5.
- Freeman's Journal*, *The*, 241; 242; 249; 261.
- French intrigue, 10; 36.
- Frigate, Pennsylvania's 35; 40.
- Galbreath, Col., 120.
- Galloway, Joseph, 24; 27; 34; 43; 44; 52; 53; 55; 56; 67; 75;

- 79; 81; 85; 90; 91; 92; 100; 102; 103; 104; 105; 106; confiscation of estate, 172.
- Garrison, William Lloyd, and Bryan, 363.
- Gaspée* schooner incident, 97-8.
- "Gentlemen mobs," in Philadelphia, 323.
- George III, King, 40.
- Gerard, M., French minister, 156; reception to, 157-8.
- German settlers, 48; 105; population, 111.
- Gold and exchange, 12.
- Gordon, Governor, 9; 10.
- Grand Jury, "Adrian" on, 242-3-4-5-6-7.
- Graydon, Alexander, quoted, 136.
- Great Britain compared with Pennsylvania, 4; and American Political Science, 104; offer of, 105-6.
- "Great Fear," The, 115.
- Growdon, Judge Lawrence, 27.
- Habeas Corpus* suspending bill, 216.
- Halifax, Lord, 45.
- Hamilton, Andrew, 9; Judge of Admiralty, 11; 12; 13; 27.
- Hamilton, James, Governor, 13; 27; resigns, 28; and power of Parliament, 29; 38; 39; 40; 42; 43; 44; 82; 108; 143.
- Hancock, Gov. John, 239.
- Hanna's Town, 290.
- Harris, John, 213.
- Harrisburg Conference of 1788, 327-8; manifesto of compared with Congressional amendments and dissentients of Ratifying Convention, 337-8.
- Hartley, Lawyer, 233.
- High Court of Errors, creation of, 168; 205; 207; 214; 220; character of, 221; 223-4-5-6-7-8; 254; 265; lawyers in, 266; 273.
- Hillsborough, Earl of, 80; 85; 89; 90; 92; 99.
- Historical Review, An*, 38; 39.
- Holland, example of, in pre-revision of laws, 141; and American national bank shares, 281.
- Hopkinson, Judge Francis, sketch of, 226-7; satire of, 247-8-9; 254; 255; and University seal, 257; 265; 269; cartoon by, 269-70; 277; as "Uncommon Sense," 297; and *The New Roof*, 316-7; 318; 319; and plan of celebration of new national constitution, in Philadelphia, 326.
- House of Commons, 124.
- Howe, Lord, 35; General, 133; and Philadelphia, 143; 144; 147; 153.
- Hutchinson, Dr. James, 185.
- Hutchinson, Gov. Thomas, of Boston, 96-7; 99.
- Immigration, from Ireland and Germany, 16.
- Imperii in imperio*, 262; 298.
- Imperial Powers, 6; policies, 63.
- Independence, 13; 31; 32; 40; 65; 101; 105; 107; 108; 109; unanimity on, 109; declaration of, 110; 111; 112; 116; 117; and union, 117; 120; 121; and Penna., 154; 155; celebration of, 156; and slavery, 168-9; complete, 124.
- Independent Gazetteer*, 241; 249; 263; 308-9.
- Indian trials, 288-9-90.
- "Indian Queen," as a Lower House, 297.
- Indiana Colony, 136.
- Indian Relations, 10; 12; purchases, maps of, 30; 35; 36; 47; 51; 81; 91.
- Intellectual activity in Pennsylvania, 81.
- Inter-State Economic Convention, 206; 208; 209; 213; Constitutional Conference, 328.
- Ireland, manufacturers in, 18; excepted in Philadelphia boycott, 73; 79; prosperity of, 324.
- Irish settlers, 48.
- Irish Parliament, 17; 18.
- Jackson, Richard, agent, 43; 53; 57; 75; 76; 77; 79; 90.
- Johnson, Sir William, 47; 51.
- Judges of Philadelphia, 60-61; 62; of state, 80; salaries



- of Justices, 235 (see salaries of Judges).
- Judiciary, law, of 1722, 8; 10; 38; 46; 127; independence of, 259.
- "Jurisperitus," 241; 242; 247.
- Junto, The, 81; 82.
- "Junto" (see Federalists, and also National Bank Group).
- Justices of the Peace, account of, 291-2; 339-40-41.
- Kaims, Lord, 318.
- Keith, Governor Sir William, 13; 37.
- Kentucky, independence of, 273.
- Kinsey, John, 9; 11; 12; 13.
- Knox, Senator, 327.
- Lancaster people, on Constitution of 1701; 54; capital, 145; 148; 151; 155; county of, 259; nominating conference, 336.
- Land, rate, 17; 46; office, 207; speculators, 284; owners, not represented, 308.
- Laurens, President, of Congress, 157; 158.
- Laws, obstacles to passage of, 33.
- Law Reports, account of, in Pennsylvania, 295-6-7.
- Laws and Constitution, 8.
- Law of Nature, 104.
- Lawyers, and Merchants (see Merchants and Lawyers); in Supreme Court, 229; 254; 255.
- League of Nations, 115.
- "Legal machines," 297.
- Legal practice, early and later, 289-90.
- Legal Society, of young lawyers, 294; (Law Academy forerunner).
- Legal tender law, 337.
- "Le Gerard," American privateer, 159; 160.
- Legislative Council (see Council, Legislative).
- Legislative obstacles, in Pennsylvania, 4; reduction of, 4.
- Legislature of Pennsylvania, composition of, 5; 7.
- "*L'etat, c'est moi!*," 207.
- Letters from a Farmer*, 83; 85.
- Levy, Lawyer, 254.
- Lewis, William, 184; 228; 233; 234; 240; 254.
- Lexington and Concord, 105; as *Lusitanias*, 106.
- Lieutenant-Governor, 4; 6; 7; 9; 10; 13; and support of, 31; 32.
- Lincoln, Abraham, attitude on slavery, 363.
- Lloyd, David, 1; 2; 3; 4; 5; 6; 7; 8; 9; 17; 27; 33; 53; and George Bryan compared, 93; 122-3; 130; 188; 217.
- Lodge, Senator, 327.
- Logan, James, 9; 10; 13.
- Longchamps, Charles Julian de, case of, 296.
- Lords Justices' instructions, 27.
- Lower Counties (see Delaware).
- Luzerne, Chevalier de, 206.
- McKean, Chief Justice Thomas, 124; 141; 143; 172; sketch of, 224-5; 233; 234; 237; 238; 240; 241; 250; 254; 256; 260; 265; opinions of, 295; as "Chief Justice I," 298; burned in effigy, 322; 339-40-41-42; 351; 352; 354.
- Madison, James, 115; praised, 347.
- Madison, Rev. and President (College), 175.
- Magna Charta* of Pennsylvania, 2; 7; 9.
- Mansfield, Lord, and American political science, 101; 104.
- Manufacturers, 17; 75.
- Marbois, M., 260; and Longchamps, 296.
- Markets, American, overloaded by British, 301.
- Martin, Luther, 318.
- Mason and Dixon Line, 178.
- Massachusetts, action of, 85; 89; 96-7.
- Matlack, Col. Timothy, 120; 131; 173.
- Medical School, University of Penna., 346.
- Merchant marine, American, 301; exclusion of, 302.

- Merchants and Lawyers, position of, 22; list of in 1752, 22; study of law, 26; greeting to Gov. John Penn, 44; list of, 44; and Non-Importation (see Non-Importation), 84; 87; and high prices, 180.  
 Mifflin, Thomas, 82; 140; 274; 275; 277-8; 299.  
 Miles, Judge Samuel, 254; 257; 258; resignation from Council of censors, 260.  
 Military and Naval Movements, 35; rendezvous, at State House, 143.  
 Ministerial policy (see Hillsborough, Earl of).  
 Minority Protest, 58.  
 Mint, a, proposed by Congress, 273.  
 Mississippi river, and Kentucky, 273; 287.  
 Mob, at State House, 253; at elections, 258.  
 Moland, John, 42.  
 Monarchy, in U. S., 300; 304.  
 Montesquieu's *Spirit of The Laws*, 115; 312; influence of, in France, 336.  
 Moore Dr. Charles, 83.  
 Moore, Justice William, 34.  
 Morgan, Dr. John, 81; 82; and Dr. Shippen, 212; 256.  
 Morris, Governor (Chief Justice) Robert Hunter, 30; 31; 33; 38.  
 Morris, Robert, 112; 168; 180; 185; 272; "*Centinel*" on, 337.  
 Morton, John, 66; 68; 70; 71; 72; 73; 106.  
 Muhlenberg, Fred. A., 258.  
  
 National Bank, group, The, 251 (see Bank of North America and Bank of Pennsylvania), 257; state charter of, 257-8; 261; 262; 264; 270; 271; 273; 274; 279-80; shares held, 280-1; 282; 283; 287; 299; 303; 311; 313; 318; 324; 325; 335; 336; a history of, by *Centinel*, 350 *et seq.*  
 National Constitutional Convention, 253.  
 National government, a fight for, 303 (see Constitutional Convention, National), and State Government, in State House, Philadelphia, 346; 353.  
 National Taxing power, 253.  
 Negroes, in Pennsylvania (see Abolition Act of 1780 and Bryan, George).  
 New Hampshire, and the National Constitution, 320.  
 New Jersey, towns of 1754, described, 23; and a national constitution, 280-1; paper money in, 302; and the national constitutional convention, 303.  
 New London Academy, 81.  
 New Orleans, great fire in, 325.  
 Newspapers, and The Stamp Act, 75; and the national constitution, 306; 307.  
*Nisi Prius* (see Courts, of State), 231; 232; 255.  
 Non-Exportation, 104.  
 Non-Importation agreements, 73; 75; 84; 85; 87; 90; 104; 105.  
 Norris, Isaac, report on history of paper money, 11; 28; 34; 58.  
 Northampton county, 259.  
 North Carolina, cession of western lands, 286-7; and the national constitution, 307.  
 North, Lord, proposals of, 154-5.  
 Northumberland county election case, 276-7.  
  
 Olmsted, Gideon, 159; 160; 209-10.  
 Opinions, judicial, 295-6-7.  
 Oswald, Eleazar and Richard, 241; 242; 249; 255; 258; 263; 307; 308-9; 309; 310; 339-40-41-2; 350; 351.  
 Otis, and the Sugar Act, 52.  
 Oyer and Terminer Court, 255; justices of, 290-1.  
  
 Pacifists and Tories, 207.  
 Paine, Major Thomas, 117; 189; honored, 203.  
 Paper Money, 10 (see Trade balance), report on history of, 11; 12; report on, 16;

- 17; 24; 28; 31; 33; 37; and supply bill, 40; 42; 57; 76; 79; 80; 90; 235; 236; 267; 301; of Penna., 302; effect of, 305; in 1788, 325.
- Paris, Ferdinando J., colonial agent, 10.
- Parliament, composition of, 5; representation in, 18; authority of, 104 (see Colonial Constitution), 118.
- Patridge, Richard, 12; 27; 34; 39.
- Party names, in 1788, 305.
- Paxton Remonstrance, 48.
- Peale, Charles Wilson, 117; 141; 174; 185; 189; 204; 209; 213.
- Pemberton, James, 67.
- Penn Estates, and taxes, 30; 31; 32; 39; 59; confiscation of, 168; 172; 184; 198-9; 200; 207.
- Penn Family, and Taxed Estates, 30; 31; 32; 39; 45; 47; 48; 49; 56; 59; 83; 91; 105; 108; 114; 140; 200.
- Penn, John, 10; Governor, 25; 44; 45; 47; 59; 60; 77; 81; 82; 84; 85; 90; 91; 100; 105; 143; 172; 184.
- Penn, Richard, Jr., 91.
- Pennsylvania Hospital, 212.
- "Pennsylvania-ization," 32.
- Pennsylvania, a Vice-Royalty, 2; charters of, primary and secondary, 3; compared with Great Britain, 4; legislative obstacles in, 4; legislature, composition of, 5; and Delaware, 5; 7; 10; growth of, 91-2; 95; and Virginia, 99; 106; 110; 112; 117; 126; 131; 152; 161; executive mansion of, 172; 180; and slavery, 198; 212.
- Pennsylvania-Virginia Boundary, 143 (see Boundary, Western, of Penna.).
- Penn, Thomas, 10; 12.
- Penn, Wm., 1; 2; 3; 4; 5; 6; 7; 8; 11; and Assembly finance, 31; 33; 45; 64.
- Petitions, use of, 183; 263.
- Philadelphia, British occupation of, 144; 147; evacuation of, 155; ceases to be capital, 254; and celebration of new national constitution, 326; offers new Court House as national capitol, 343; and Boston, 22; Assebmymen of, 1764, 54; elections in, 238; judges in, 60-1-2; 130; objective of British, 109; 142.
- "Philadelphia," letter of, 141.
- Philadelphians, noted, homes of, 282.
- "Phocion," letter of, 139-40.
- Pitt, and the Assembly, 40; in power, 80.
- Plan, or Frame (see Constitution of 1776).
- Political philosophy, in America, and the common law, 101 (see Political Science, in America).
- Political science, in America, 101; and the revolution of 1688, 101; 104; in Pennsylvania, 112; 113; 115; 122; 123; 252; 253; 254; 264; 268; 279-80; 281; 297; 311-2-3-4-5; 338; 343; 353; contest of American and British ideas in, 361.
- Potter, Col., 120; General, 251; 260.
- Potter, General, 249.
- Power of The Purse, 3; 6; 7; 29; 84; 101; 252; 253; 257; 264; and the Wilson Amendment to the Articles of Confederation, 279-80; 281; 313; 334.
- Powers, Specified and Implied, in charters, 101.
- Preamble, to May 10 resolutions, 108; of Penna., 124.
- Presbyterians and politics, 36; 37; 55; 59; 67; 92; 105; 107; 111; 118; 183.
- Presbyterian "New Lights" (see Second Presbyterian Church, Phila.).
- President, of Executive Council, 11 (see Council Executive).
- Price, Dr., 117.
- Privy Council, 4; 6; 7; 40; order of, 45.
- Profiteering, forestalling and regrating, 158; monopoly also, 216.
- "Projector" (see Hopkinson, Judge Francis).

- Proprietary (see Penn Family).
- Proprietary, and finance (see Anti-Proprietary Movement).
- Proprietary Party, 257.
- Proprietor, not part of Legislature, 6.
- Protestant Episcopal Church (see Church of England).
- Province, change of, to State, 116.
- Province House (see State House), 17.
- Provincial Conference, 100; 102; 103; 105; second, 105; 107; 108; 109; 110; 118.
- Provincial ship (see Frigate).
- Provisional Government, of Penna. (see Convention, Provincial Constitutional).
- Public Debt, National, 251; 253; 283-4; 300.
- Public Credit, 273.
- Public Works, at Reedy Island, commissioners for, 40-41.
- Quaker, Revolution of, 3; 8; and politics, 92; (see Anti-Proprietary Movement), 107; 111; 113; and the Revolution of 1776; 335; in politics, 32; 35; 36; 37; 46; 47; 48; 49; 50; 51; 56; 57; 92; 105; 118; 126; and slavery, 164; 257; 351.
- Quotas, relative (Pa., Va., and Mass.), 151.
- Ralph, the author of, *An Historical Review*, 38.
- Reed, Col. Joseph, 103; 106; 142; 143; General, 156-7; 159; 163; 164; as President, 165; 168; 172; 183; 185; 186; 214; salary, 215; 219; 221; sketch of, 223; lawyer, 237; 241; 249; 250; 258; 336.
- Remonstrance of 1704, Lloyd-ean, 38.
- Reports, Law (see Law Reports, in Pennsylvania).
- Representation, in constitution of 1776; 126.
- Republican party (of 1785), (see Wilson, James), 274.
- "Republican Society," The, 172-173; 174; 180.
- Responsibility, a corner-stone of Constitution of 1776 (Penna.), 311.
- Revolution, a new thing, 108; 111; 112-3.
- Revolution of 1688, 1; 2; 3; 5; 7; 8.
- Rhode Island, and the *Gaspee* Commission Court, 97-8; and national finance, 283; and the five-per-cent, 300.
- Riots, in Carlisle, 322; 323.
- Rittenhouse, David, 117; 120; 131; 133; State Treasurer, and on Virginia-Penna. boundary commission, 175.
- Rodney, Casar, account of Stamp Act Congress, 70-71.
- Roof, The New* (see *The New Roof*).
- Ross, Col. George, 119; Judge of Admiralty, 160; 161.
- Royal provinces, 52.
- Rush, Dr. Benjamin, 115; 180; and brother, Jacob, 250; 265; on George Bryan, 295; footnote; 318; 336.
- Rush, Justice Jacob, 265.
- Salaries, of Judges, 235; 236; 237; 238.
- Sargent, John, of London, 40.
- Schools, of Political Science, 253; 254; 264; of nationalism, 279-80; 281; 303.
- Scotch-Irish, 92.
- Secession, right of, 327.
- Second Presbyterian Church, founding of, 25; 37.
- Self-restraint, legislative, 5; 113; 117; 118; 122; 128; 137; 252; 311.
- Sergeant, Jonathan Dickinson, 143; 184; Attorney-General, 228; 233; 234; 241; 250; 254; on the National Bank, 273.
- Servants, 11.
- Shelburne, Lord, 80.
- Shippen, Dr. Edward, 82; 256.
- Single-chamber legislature, advocates of, 113; 171; in either state or nation, 252-3; 259.
- "Sixteen Seceders," 308.
- Slavery, trade in Pennsylvania urged, prohibited in 1775;

- 105; and George Bryan, 145; and Vermont, 145; 146; 164; 168; appeal of, Vice-President Bryan on, 169-170; 181; 182-3; 186; 189-90; letter of Mr. Bryan, on, 190-91-2-3-4; Abolition Act, 195, *et seq.*; process, 198; in Mass., 198; 206; 197-8.
- "Sloop Active" case, 159; 160; 161; 175; 179; 204; 206; 209-10-11-12.
- Smiley, John, 258; 318.
- Smith, Col. James, 119.
- Smith, Samuel, 25; and wife, Mary, 26.
- Smith, Col. Thomas, 120; 233.
- Smith, Provost William, 32; 34; 83; 144; 200; 202; 203; 256; 258; 344.
- "Society of Cincinnatus," 300.
- South Carolina, 161.
- Sovereignty, location of, in the individual, 101 (see Political Philosophy); Judge Hopkinson on, 297 (see Political Science).
- Spain, 11; 42; and the west, 273.
- Specie, in U. S., in 1788, 325-6.
- Stamp Act Congress (of 1765), 66; 67-8; wag's description of, 68; organization of, 69; addresses and memorials of, 69-70; Rodney's account of, 70-71-72; repeal of, 75; 76; 77; 79.
- Stamp and Sugar Acts, 57; 63; 64; 65; 66; repeal of, 73; 75.
- Stamped Paper, in Philadelphia, 73.
- State Board of War, Penna., 141.
- State capitol, 268 (see State House).
- State House, 9; 10; (see Province House), 17; 42; 62; 82; changes in, for Assembly, 162; 212; at Harrisburg, 299 (see State Capitol).
- State House Library, 202.
- State Legislatures and the Wilson Resolutions, 253.
- States, creation of, in west, 284; rival northern and southern, in west, 302.
- St. Clair, General, 258.
- Stuart Kings, 64.
- Sugar Act, 52.
- Sugar and Tea Tax (see Taxation, by Parliament).
- "Super-State," 303.
- Supply Bills (see Paper Money).
- Supreme Court, 127; 143; 184; 220; a fourth justice of, 221; robes of Justices, 227-8-9; lawyers in, 229; 237-8; 239; 240; lawyers in, 241; 242; robes of, 250; 254; as Criminal Court, 255; 256; 265; 289; and politics, 297-8; 339; 340; 341.
- Supreme Executive Council see Council, Executive, etc.).
- Surveying As Applied to Portraiture* by Hopkinson, 269-70.
- "Suspects" (see Dangerous Persons), 155.
- Swift, Dean, 18.
- Taxation, by Parliament, 53; 57; 63; 64-5; 77; 79; 83; 89; 90; 91; 92; 99.
- Tea and Sugar Tax (see Taxation, by Parliament).
- Tennant, Rev. Gilbert, 25; 26.
- "Terrible Uproar," by Judge Hopkinson, 249-50.
- Test Oaths, 116; 124; 132; 142; 162; reservation to, 162; 262; 267; 279; or laws, 301; 335; 336; 337.
- "*The New Roof*," 316.
- Thomas, Governor, 11; 12; 13.
- Thomson, Charles, 24; 81; 82.
- Ticonderoga, 35.
- Tie vote, notable, 67.
- Tories, 105; 132; 173; 207; 235; 257; 301; 303; 335.
- Township *vs.* tract, or northern *vs.* southern mode of settling in western lands, 285.
- Trade balance and paper money, 10 (see Paper Money).
- Trade exploitation, 10 (see Paper Money).
- Trade, in Penna., in 1786, George Bryan on, 301.
- Transportation, routes westward, 43.
- Treasurer, of U. S., 288.
- Treaty, Anglo-American, and western lands, 253.

- Tucker, Dean, 104.  
Turgot, 117.
- "Unconstitutionality," of Stamp Act, 75; 83.
- Union, of Colonies, 12; 28-9-30; 92; 104.
- United States, first embryo constitution of, 117; second (see Confederation, Articles of).
- University of Pennsylvania, 201; (see College of Philadelphia); schools of, 202-3; Treasurer, 256; estates, 256; at Fourth and Arch Streets, 257; schools in, 257; degrees conferred, 257; schools in and conditions of, 266; proposed site, 267; condition of, 294; restores College of Philadelphia, 342; 344; salaries of professors in, 344; Financial Secretary proposed, 344; new buildings of, 345; "Lodge" building of, 345; greeting to President Washington, 346; first student gowns in, 346; reorganization of Medical School of, 346; prosperity of, 346; 353; union of, with College of Philadelphia, 354; condition of; 354.
- Valley Forge, 151; 152.
- Venus, Transit of, 83.
- Vermont, and slavery (see Slavery), 109.
- Vice-Admiralty Court, 7.
- Vice-President (see Council Executive).
- Virginia's action, 85; 97-8; 99; letter on, 133; on a constitutional convention, national, 298; 342.
- Virginia, claims, 168; boundary commission, 175; 176-7-8-9; 216; 233.
- Wallace and Bryan, 19; 22.
- Wallace, James, 18; 19.
- Wallis, Samuel, release from debtor's prison, asked by George Bryan, 24.
- War money, distribution of, 39.
- Washington, Col. George, 106; General, 152; 153; President, and University degree, 257; popularity of, 303; 311; 312; University greeting to, 346.
- Washington county, 259.
- Wayne, Gen. Anthony, 162; 258; 278.
- "Well-born," 316.
- Western Lands, 233; 253; 257; 283-4-5-6.
- Westmoreland county, 259.
- Whartons, John and Joseph ("Duke"), 135-6.
- Wharton, Samuel, 136.
- Wharton, Thomas, 40; 102; 131; 133; 134; 135; 136; 138; 139; 144; 149; 151; death of, 153.
- Wheat, American, demand for, in 1788, 324.
- Whigs, 105; 117; and "Furious Whigs," "Whig Society," 117; 141; 157; 304-5; and the Revolution, 350.
- White, Rev. William, 81; 94; 260.
- Whitefield, influence of, in Philadelphia, 24-5; 36.
- Whitehall, Robert, 110; 120; 149; 276-7; 318; and the Harrisburg Conference of 1788, 327.
- Wilcocks, Alexander, 233.
- Willing, Thomas, 40; 44; 54; 55; 56; 57; 58; 59; 60; 76; 106; 179.
- Wilson Amendment, to Articles of Confederation, giving power of the purse to Congress (see Wilson Resolutions of 1783).
- Wilson, James, 72-3; 81; sketch of, 94-5-6; 102; 103; 104; 106; and Massachusetts, 106; 107; 109; 110; 112; 115; 116; 117; 119; 120; 122; 123; 124; 129; 138; 139; 140; 141; 142; 144; 152; 156; 158; 159; 162; letter of, 162-3; 163; 168; 171; and the Republican Society, 172-173; 180; 184; and "Fort Wilson," 185; 189; 194; 219; 228; 229; 233; 234; 236; 238; 240; 241; in Congress, 251; 252; Resolutions of, of 19th April 1783,

252-3; 254; 257; 258; 261; 264; 266; 267; 268; defense of the national bank, 271; 273; 274; 279-80; and the Wilson Resolutions and New Jersey, 281; home of 282; 287; and Republicans, 299; and the pre-convention activities, 302; 307; and the first exposition of the national constitution, 308; *Centinel* on, 313; "fabricator" of the national constitution, 314; 315; 316; "architect" of the national constitution, 316-7; 319; as Chief Justice, 319; burned in effigy, 322; and celebration of new national constitution at Philadelphia, 326; 327; 335; "confessedly has had the principal share in framing the constitution, and its greatest advocate," 336; as

"James, the Caledonian," 337; 345; 346; 347; 348; 349; history of the "junto" of, by *Centinel*, 350, *et seq.*, 353; lectures on Political Science and Law, 353; 354. Wilson Resolution, 19th April, 1783, and power of the purse, 252-3; 261; 279; success of, 279-80; and states' actions, 280; 281; 302; 303; 304; as beginning of complaint against powers of Congress, 334. Wilson, Woodrow, 130. Workman, Professor, 317. Wynkoop, Judge, 254.

Yeates, Jasper, 229; 233; 241. York, national capital, 148; court house capitol of, 148. Young, Dr. Thomas, and Vermont, 117.





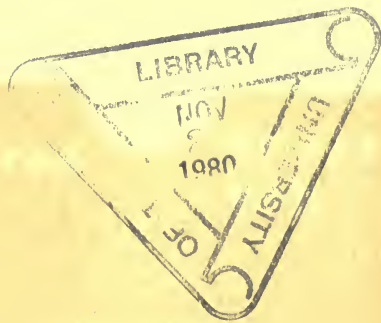












PLEASE DO NOT REMOVE  
CARDS OR SLIPS FROM THIS POCKET

---

UNIVERSITY OF TORONTO LIBRARY

---

F  
153  
K8

Konkle, Burton Alva  
George bryan and the  
constitution of Pennsylvania,  
1731-1791

